STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF ANDREW H. TISCH

Volume I, Pages 1 - 286

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Source: http://www.industrydocuments.ucsf.edu/docs/sghd0001

(The following is the deposition of ANDREW H. TISCH, taken pursuant to Notice of Taking Deposition, at the offices of Dorsey & Whitney, Attorneys at Law, 250 Park Avenue, New York, New York, on September 30, 1997, commencing at approximately 8:38 o'clock a.m.)

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Judge Fitzpatrick, via teleconferencing

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I N D E X

EXHIBITS		DESCRIPTION	PAGE MARKED
Plf Ex	1266	Excerpt from Tobacco Reporter, "New chairman; old ties," Bates 82842480-3	37
	1267	Photocopy of handwritten assembly of note cards, Bates 87921086-93	71

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P R O C E E D I N G S

(Witness sworn.)

ANDREW H. TISCH

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. FINZEN:

Q. Good morning.

A. Good morning.

Q. Would you state your full name and address, please, for the record.

A. Andrew H. Tisch, [DELETED] [DELETED].

Q. Mr. Tisch, my name is Bruce Finzen. I'm one of the counsel for the State of Minnesota and Blue Cross and Blue Shield in an action that they have commenced in Ramsey County District Court in the State of Minnesota against Lorillard and other tobacco company defendants, and you are here this morning pursuant to a notice of deposition to provide a deposition in that case. Is that your understanding?

A. That is my understanding.

Q. What is your current position?

MR. WACHTELL: Mr. Finzen, just for the

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record before you start, I -- I handed you a few moments ago a xerox of a group of index cards in the witness's writing. They bear document production numbers 87921086 through 93. These, as I understand it, are index cards prepared by the witness in connection with his preparation for his testimony before -- in the matter before Congressman Waxman. They were in a -- in a desk drawer that had been brought over from Lorillard when the witness left Lorillard. And they --

It is conceivable that, in view of the fact that they represent preparation with counsel, that one could say that they are conceivably privileged, but in any event the witness did review them in connection with his preparation for this deposition, so I thought that you were entitled to have them.

MR. FINZEN: Thank you.

BY MR. FINZEN:

Q. What is your current position of employment?

A. I am chairman of the management committee of Loews Corporation.

Q. And what do your duties entail in that position?

A. I have responsibility for certain of the areas in the home office for real estate, human resources, purchasing, insurance. I also have responsibility

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for the management committee and responsibility for overseeing certain of the investments in Loews Corporation.

Q. Could you please briefly explain what the corporate structure is of the Loews Corporation?

A. Loews Corporation is basically a holding company, has a number of subsidiaries, including Bulova Watch Company, of which I also serve as chairman of the board; Lorillard, Incorporated, whose subsidiary, Lorillard Tobacco Company, is the operating company for -- for Lorillard; CNA Insurance, of which Loews owns 80 percent, a little more than 80 percent; Diamond Offshore; Loews Hotels; and let's see, a significant portion of Majestic Shipping. I believe that's -- that's the bulk of the investments.

Q. You mentioned CNA being approximately 80 percent owned by Loews. What about Bulova?

A. Bulova is 97 percent owned.

Q. And Lorillard, Inc.?

A. Hundred percent.

Q. Diamond Offshore?

A. Fifty-one percent, I believe.

Q. Loews Hotels?

A. Hundred percent.

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Q. And Majestic Shipping?
A. Forty-nine percent.
Q. The Tisch family has a significant stock ownership in Loews, as I understand it; is that correct?
A. That is correct.
Q. Do you know approximately what the percentage stock ownership is today by the Tisch family?
MR. WACHTELL: How do you define "the Tisch family," Mr. Finzen?
MR. FINZEN: The direct relatives of the deponent.
A. They -- they own a significant portion. I'm not sure exactly what the holdings are though.
Q. What is your ownership in Loews?
A. I own a thousand shares.
Q. Do you have indirect ownership of Loews stock through any other vehicle, such as a trust or closely-held corporation?
A. Not that I know of. My -- my proxy statement ownership is an interest of a thousand shares, the Loews proxy statement. My son, I believe, also owns 20 some odd shares.
Q. And are these shares you're referring to publicly-traded shares?

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A. That is correct.
Q. Does the Tisch family, defined as your direct relatives, your father, your uncle, your brothers, your cousins, have a majority interest in Loews Corporation stock?
A. No.
Q. Do they have a controlling interest in Loews Corporation stock?
A. What would be defined as "controlling interest?"
Q. It would be defined --
A. I -- I think that's a fair characterization.
Q. How long have you been in a capacity of any sort with the Loews Corporation?
MR. WACHTELL: Are you including its subsidiaries in that question?
MR. FINZEN: Yes.
A. I was -- I started at Loews in 1971 and then went to -- well from '71 to '75, and then '77 to the present I've been involved with Loews or its subsidiaries.
Q. Would you give us a history of your involvement going back from your current position back to 1971 with Loews or any of the Loews Corporation businesses.
A. Can I do the other way?

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Q. Sure.
A. It's probably easier to go forward.
Q. That's fine.
A. 1971, September '71 I started with Loews, very briefly in the human resources area, and then after several months moved over to Lorillard in their training program. Was in the Lorillard training program for approximately a year. In 1972, beginning of '73, I went to the market -- went into the marketing area at Lorillard, stayed there until August of '75. Left the company at that time and came back to Loews Corporation in June of '77 as manager of financial and operational analysis. In 1979, March of '79, went off to Bulova Watch Company, became president there in late 1979, stayed there until about 1989. In 1989 I went over to Lorillard to become chairman and chief executive officer, stayed there until June of 1995 when I moved over to Loews in my current position.
Q. Based upon your experience over the years with the Loews businesses, would you say that they are carefully run?
MR. WACHTELL: Object as vague.
A. How do you --
Q. Sorry?

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A. How do you define "carefully?"
Q. Well they --
Are they well-run businesses?
A. We would like to think so.
Q. Are they successful?
MR. WACHTELL: Vague and ambiguous. You may answer.
A. I would say so.
Q. And are key business strategies carefully thought out before being implemented?
MR. WACHTELL: Vague and ambiguous, objection. You may answer.
A. I -- I think so.
Q. And by that I mean things like going into new markets, introducing new products, changing price structure, that sort of thing.
A. I think certainly any corporation that I've been involved with, those have been carefully-thought-out strategies.
Q. When you were the CEO at Lorillard, what -- what did your job duties consist of?
A. I ran the company.
Q. Can you articulate a little bit for the jury what your duties entailed in running the company?
A. Well I was responsible for the profitability,

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for the marketing, for the sales, for the various aspects of the -- of the corporation.

Q. How much did you get involved in the research and development or the scientific side of the business?

A. Very little.

Q. And what involvement at a very little level did you have?

A. Well in research I had a very good, very -- very capable number-two person at -- at Lorillard who had come up through the research area, and so I gave him the responsibility of handling the research and the manufacturing, and he -- he did most of it with very little guidance. He had -- he had been in that area for many years, certainly since 1971 when I first met him, and he had run those areas very capably, so I had -- I needed to spend very little time in the research area.

Q. Who are you referring to?

A. Dr. Alexander Spears.

Q. And what was his position with the company when you were the CEO?

A. I believe he started as executive vice-president, and when I left -- before I left he was vice chairman and chief operating officer.

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Q. Who else reported to you as CEO other than Mr. Spears?

MR. MONICA: Dr. Spears.

MR. FINZEN: Dr. Spears.

A. Dr. Spears.

Direct reports, the chief legal counsel, Arthur Stevens; the chief financial officer, Al Peterson; Martin Orlowski, who is -- was the executive vice-president of marketing; at one point the top salespeople, Richard Orcutt and then Randy Spell reported to me. I think that was it.

Q. In the structure of Lorillard, to whom did you report?

A. To the board of directors.

Q. Of?

A. Lorillard.

Q. Of Lorillard.

And in terms of the Lorillard, Inc./Lorillard Tobacco relationship, was the board of directors that you reported to that of Lorillard, Inc., or Lorillard Tobacco?

A. I believe it was both.

Q. And they in turn reported to the board at Loews?

A. No.

MR. WACHTELL: Objected to as vague and

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ambiguous.

Q. To whom did they report?

A. Well they -- they reported to the shareholder, which was Loews Corporation.

Q. Okay. And would that be done through the board of Loews, that reporting?

A. Principally.

Q. When you were at Lorillard in the 1970s in the position you referred to as the marketing position, sales and marketing --

Is that correct?

A. That's correct.

Q. -- to whom did you report during that period of time?

A. Various different people. Mostly as an assistant brand manager I would report to one of the brand managers, and then when I was a brand manager I reported to one of the group brand managers.

Q. What were your job duties when you got into the brand management?

A. I was responsible for the marketing of the specific product to which I was assigned.

Q. Did you have specific brands for which you had responsibilities?

A. When I became a brand manager, yes.

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Q. Which brands?
A. First chewing tobacco, little cigars, Big Red Chewing Tobacco, Beachnut Chewing Tobacco, Havana Blossom, Erik little cigars, Madison, Omega, and Between the Acts. I may have left out one or two big brands there. And then after I was responsible -- after that I went on and was responsible as the brand manager for Kent Golden Lights.
Q. Did you have sales responsibility other than a brand management level for any other cigarette products?
A. No.
Q. So if I understand, then, between 19 -- roughly 1972 and 1975, your only involvement with the cigarette side of the business from the sales and -- and marketing standpoint was with Kent Golden Lights?
A. No. As assistant brand manager I worked on various brands.
Q. Which?
A. Most of the time Kent.
Q. Any others?
A. Several new products.
Q. Which ones?
A. A product called Maverick and a product called Redford.

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Q. Were either one of those ever sold commercially by Lorillard?
A. Each of them went into test market, and neither of them survived the test markets.
Q. Okay. Any other commercially sold brands with which you had experience?
A. No.
Q. In the -- in the position of --
A. I'm sorry, let -- let me --
I was on Old Gold as an assistant brand manager very briefly.
Q. In the position of the -- the brand manager, when you became brand manager, what -- what interaction or relationship did you have as a brand manager with people around the country in various sales regions or districts?
MR. WACHTELL: I'm not sure I understand the question. Objected to as vague and ambiguous. Perhaps you could clarify.
A. Can -- can you explain it a little further?
Q. Sure.
Did you have some contact relationship as a manager of a -- of a brand with individuals that Lorillard had positioned in sales and marketing in various areas of the country?

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MR. WACHTELL: Objected to as lacks foundation. You can answer.

MR. FINZEN: You may answer.

THE WITNESS: Okay.

A. May -- some --

I had some interaction with the salespeople.

Q. And how -- how did that interaction occur? What was the nature of that interaction?

A. Typically it would be through written documents, through work plans developed to support a brand that would be transmitted to the field. And in the case of a specific project, through correspondence back as to the results of those work plans, some telephone conversations with either regional managers or division managers. There would be development of the work plans with the sales department that was right next door to us, you know, the next -- next group of offices on the same floor.

Q. Did you have occasion to -- to meet those individuals who were managers out in the field?

A. Yes.

Q. And would that be in sales meetings of some kind where they would come to New York or where you would go to the regions?

A. We --

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It would either be in the national sales meeting, which was held in December of each year, or it would be on a field visit where I would go out to see how the brand was performing.

Q. Why did you leave the position of CEO of Lorillard?

A. Basically I felt I had accomplished everything that I had set out to do and was -- thought it was time to move on.

Q. What were the accomplishments that you had set for yourself that you believed you had met by the time you left?

A. The stabilizing of the market share. Increasing unit sales. The company was on a firm management footing and there was a -- a good transition for new -- and opportunity for new management.

Q. Since you left the CEO position, do you have any employment relationship or have you had any employment relationship with Lorillard Tobacco?

A. No.

Q. With Lorillard, Inc.?

A. No.

Q. Have you done any consulting of any kind for Lorillard Tobacco?

MR. WACHTELL: Objected to as vague and

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ambiguous. You mean pursuant to contract, or has anyone asked him a question from time to time? I mean I'm not sure I understand the question.

A. Can you be more specific?

Q. Sure.

Have you ever had any consulting relationship with Lorillard Tobacco since you left your CEO position with the company?

A. I think that's the same question you asked me before. Could you be a little more specific? I don't know what "consulting" means.

Q. Have you been approached by the business to provide advice, counsel, help with decision-making?

A. On a contractual basis?

Q. On any basis.

A. On an informal basis, yes.

Q. Okay.

A. In -- in addition to that, there is a services agreement between Loews Corporation and Lorillard Tobacco that provides certain services for Lorillard that -- that I had oversight on.

Q. All right. Tell me about the informal consulting that you have been involved with with Lorillard Tobacco.

A. It was really more transition issues where

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either Alex Spears or Marty Orlowski -- Marty Orlowski being the -- the president of the company in charge of marketing and sales -- would just ask me for -- where we stood on something, some historical-perspective questions.

Q. Do you recall what the topic was?

A. I -- you know, I don't --

I don't even recall.

Q. Any other informal consulting matters that you've had?

A. Not really.

Q. Then you mentioned there's a services agreement between Loews and Lorillard providing certain services. What services are those?

A. Well the services agreement has recently -- recently changed, and now it's primarily MIS or computer services that Lorillard principally provides to Loews. Up until fairly recently it involved human resources, some consulting on purchasing, treasury functions, MIS services where Loews provided the services to Lorillard, a few other areas.

Q. You say it has changed recently?

A. Yes.

Q. And what are the changes?

A. Well Lorillard about a year, year and a half ago

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decided to move its headquarters to Greensboro, North Carolina, and a lot of the services that were being provided because the two companies were in the same -- in the same city became more difficult to provide, so the services -- the services agreement and the amount of interaction between the companies through the services agreement changed at that point.

Q. Any other form of consulting on a contractual basis that you've had with Lorillard Tobacco --

A. No.

Q. -- since you left the CEO position?

A. Not that I can think of. When --

During the period of time that the decision was being made to move the company to -- to Greensboro, there were lot of issues back and forth about who was likely to move, and I knew the people who were the key people as well as anybody through phone conversations back and forth about programs to get people to move to Greensboro.

Q. Do you receive any ongoing compensation from Lorillard, Inc.?

A. No.

Q. From Lorillard Tobacco?

A. No.

Q. And in terms of -- of you personally, what is

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the nature of any financial interest you have in Lorillard Tobacco?

A. Only as a shareholder of Loews.

Q. And what about Lorillard, Inc.?

A. Same answer.

Q. Have you ever had occasion to value your stock ownership on a company-by-company basis, your Loews stock ownership?

MR. WACHTELL: I'm not sure I understand that question. Objected to as vague and ambiguous.

A. I -- I don't understand the question.

Q. Have you had occasion to do any analysis of what the overall value that Lorillard Tobacco brings to your own personal financial statement?

A. I have seen analyses where outsiders have looked at the value of the Loews stock and tried to break down the value of the various components.

Q. And what has that analysis shown with regard to the value of Lorillard Tobacco to the Loews stock?

A. If you look at the value of the various components of the -- of Loews Corporation and you take them at the full comparable value, it shows that Lorillard has a minimal value to Loews.

Q. And how are you defining "minimal?"

A. Anywhere from one to three times its annual

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earnings, or imputed into the value of Loews stock.
Q. Can you put a dollar figure on what that means?
A. That --
Probably in the 10- to 30-dollar range in a hundred-dollar stock.
Q. Have you ever seen a financial analysis done of Lorillard Tobacco to determine what the value of the company is?
A. I believe I have.
Q. Do you recall what the value of the company was that you saw?
A. Depended on how you valued various parts of the company, how you looked at it, but the value was significantly higher.
Q. And what -- what is the range that you recall of that significantly higher figure?
A. Probably one and a half to two and a half billion dollars.
Q. As CEO of Lorillard Tobacco, what was your last salary?
A. I believe it was the 675-thousand-dollar range.
Q. Was there a bonus along with that base salary?
A. I wish.
No.
Q. There -- there was not.

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A. No.
Q. Were there any stock options or stock plans of any kind?
A. No.
Q. What benefits in addition to the salary did your -- did you receive?
A. Continued employment.
There were the typical benefits that any employee would get: pension plan, health plan, a savings plan. Very minimal -- minimal benefits by today's standards.
Q. An automobile?
A. Had an automobile.
Q. Club memberships?
A. No.
Q. Any other benefits you can recall?
A. The use of a driver for work purposes.
Q. Anything else?
A. No, not -- not that I can recall.
Q. Have you done any consulting work with any other tobacco companies since you left Lorillard Tobacco?
A. No.
Q. Who is your counsel representing you here today?
A. You want me to --
Q. Yes.

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A. Herb Wachtell and David Murphy are representing me.

Q. And do you know -- I'm sorry. Strike that.

Are you paying them for their time here today?

A. Am I personally?

Q. You personally, yes.

MR. WACHTELL: I think that that is an attorney-client privileged issue. I'll direct the witness not to answer, unless you disagree with me.

MR. FINZEN: Well I disagree with you, but you're the one who has to make the instruction. I think I'm -- I think I'm entitled to know whether or not Lorillard is paying for his attorney's fees or not.

MR. WACHTELL: It's my understanding that either Lorillard or Loews, or both, as a matter of bylaw resolution, have fairly standard provisions for indemnifying officers and directors for counsel fees incurred in connection with their status as employees or officers, and I think this would fall within that.

MR. FINZEN: Okay. I need -- I need his testimony, though, not yours.

MR. WACHTELL: Fine. I'll withdraw -- I'll withdraw the objection to privilege.

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A. I --
Q. Let me rephrase the question then.
Are you personally paying your counsel for their time representing you here today?
A. No.
Q. And who is paying for that?
A. Either Lorillard or Loews Corporation under the indemnification provisions.
Q. And when you refer to "indemnification provisions," what are you referring to?
A. That -- I --
As a director of Loews or as an officer of Loews and as a former officer of Lorillard, there would be -- each company would be paying for my legal fees in connection with actions that I -- against me as a result of those -- those jobs.
Q. Was that part of a contractual relationship or arrangement while you were the CEO of -- of Lorillard Tobacco, a provision for payment of counsel fees?
MR. WACHTELL: Are you distinguishing contractual from bylaw, Mr. Finzen?
MR. FINZEN: Yes.
A. I -- I don't know. There --
I had no contract when I was at Lorillard. I have no contract at Loews right now.

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Q. Are you --

Are you familiar with written bylaws, though, of either Loews or Lorillard that do provide for reimbursement for counsel?

A. I am familiar, but very vague, on the specifics of them. I know -- I know that they exist.

Q. And did you personally select your counsel, or was Lorillard -- did Lorillard appoint them for you?

A. I -- I personally, if not selected, I -- I have been familiar with the work of the Wachtell Lipton firm for many years and they've done a lot of work in the past for us.

Q. How many times have you testified in cases relating to smoking-and-health issues?

A. Once that I can remember. Only once prior to this.

Q. And was that at trial or in deposition?

A. In deposition.

MR. WACHTELL: I think that's an error. I think -- I mean if -- if you want, I -- I won't say anything, but I think -- I think the witness is just mistaken in his recollection. I don't know how you're defining smoking-and-health issues.

THE WITNESS: In trial -- in trials relating --

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MR. WACHTELL: No, you had Broin, and I think you had the Florida AG.

THE WITNESS: You're correct. Two.

Q. Okay. So your answer, then, in terms of how many times you testified previously in cases related to smoking-and-health issues?

A. Two.

Q. Which ones?

A. The Broin case as a -- in deposition, and the Florida attorney general case in deposition.

Q. What did you do to prepare for your deposition today?

A. I consulted with my lawyers, I reread my testimony before the Waxman Committee, and that's really about it.

Q. All right. With whom did you meet?

A. I met with the people from Wachtell Lipton, with the lawyers representing Lorillard, and with, at various times, one or two of the lawyers from Lorillard.

Q. How many people from Wachtell?

A. Three.

Q. And from Lorillard?

A. Two.

Q. Do you recall who the people were representing

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Lorillard?

A. Well there were --

MR. WACHTELL: I think you're misunderstanding. When he says "from Lorillard," he means inside.

A. Inside Lorillard.

Q. I understand. I'm -- I'm -- I'm asking who the people were who were representing --

You're talking about counsel for Lorillard or employees of Lorillard?

MR. WACHTELL: Talking about both.

A. Both.

Q. Okay. Tell me all of the people, either employed by or employed with Lorillard, with whom you met.

A. I met with Jack Riley and Arthur Stevens, who are Lorillard employees; with John Monica and Robert Northrip, who are with Shook, Hardy & Bacon. Who else? With counsel from Minnesota (referring to Mike Docherty). You have to give me your name again. And then from Wachtell Lipton, David Murphy, Clare Chappell and Herb Wachtell.

Q. Mr. Riley and Mr. Stevens, are they both lawyers?

A. Yes.

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Q. And on how many occasions did you meet with some or all of these individuals?

A. Three times, I believe.

Q. For how long?

A. Up to four to five hours each time.

Q. Did you review any other documents than the transcript that you -- that you referenced a moment ago of the Waxman hearing?

MR. WACHTELL: And the cards that I previously indicated to you.

A. Obviously the cards that were my note cards from the Waxman hearings. I reviewed the Frank Statement very briefly. Other than that, I did not review a lot of documents.

Q. There were others, however, besides the Frank Statement, the Waxman transcript and the notes of your preparation for the Waxman hearing?

A. I saw a few of the -- of the ads that were noticed.

Q. Advertisements?

A. Advertisements.

Q. Okay. Do you recall which ones?

A. There was one True ad, and I believe there was one Newport ad, or xeroxes of them.

Q. Anything else you recall reviewing?

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A. One -- either a memorandum or one page about the Gulf War.
Q. Okay. Anything else?
A. That's all that I can remember.
Q. Did you review any depositions?
A. No.
Are you talking about any -- any --
Q. Transcripts of depositions.
A. I familiarized myself with my deposition from the Broin case.
Q. Okay. Any others?
A. No.
Q. Did anyone tell you about the deposition of Dr. Spears last week?
MR. WACHTELL: Object to the question and direct the witness not to answer on attorney-client privilege. I think you're now going --
I didn't mind when you were asking him what he looked at, but if you're going to go into discussions in preparation, I think you're over the line.
Q. Did you review the Spears deposition transcript?
THE WITNESS: I -- I don't have to answer that according to my lawyer.
MR. WACHTELL: Yes, you can answer that. Did you review the Spears deposition transcript.

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A. No.

Q. Was any portion of the Spears deposition transcript read to you?

MR. WACHTELL: Again, I'm going to direct the witness not to get into conversations with counsel.

MR. FINZEN: I'm -- I'm --

It's a foundational question at best as to whether or not any of it was read. I haven't asked what, I've only asked whether.

MR. WACHTELL: Well I think -- I think that if I permit you to start doing that, that -- you know, I don't know where the line gets drawn or where the waiver lines get drawn. So I think you're asking for conversations with counsel in preparation, and I think that's over the line, so I'll direct him not to answer.

MR. FINZEN: And you're taking the position that anyone present from Lorillard or counsel for Lorillard still maintained the privilege, having Lorillard counsel and Lorillard employees present?

MR. WACHTELL: Certainly.

(Telephone rings.)

(Discussion off the stenographic record.)

THE REPORTER: Let's go off the record a

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moment, please.

MR. WACHTELL: The Lorillard employees that you referred to are, as the witness indicated, counsel.

MR. FINZEN: I -- I understand. The question goes to whether you're taking the position that he still has a relationship with Lorillard such that their presence does not void the privilege that he would have with you as his counsel.

MR. WACHTELL: I -- I think that there is a joint privilege here, and I'm asserting it.

BY MR. FINZEN:

Q. Did you take any notes during your preparation for today?

A. I don't believe I did.

Q. Other than the notes relating to your preparation for the Waxman hearing, did you bring any other documents with you today?

A. No.

Q. Are you being compensated in any way for your time at the deposition today?

A. No.

Q. When did Loews purchase Lorillard Tobacco?

A. To the best of my recollection, it was 1967 or '68.

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Q. And at that point in time, was Loews a publicly traded corporation?
A. I believe it was.
MR. WACHTELL: I'm sorry, I was a little bit asleep at the switch. When you use "Loews," then Loews is not the present Loews, so I think --
I object to the question as vague and ambiguous. I think you ought to clarify what corporate entity you're talking about.
MR. FINZEN: Well that's the question I -- I thought I asked.
Q. What was the legal entity that purchased Lorillard Tobacco?
A. I believe the legal entity was Loews Theatres, Incorporated.
Q. And was that a publicly traded corporation at the time of the purchase?
A. I believe it was.
Q. Did the Tisch family -- again defined as your close relatives, your father, your uncle, your brothers, your cousins -- own a majority of the stock of Loews Theatres at the time of the purchase?
A. I don't believe they owned a majority of the stock.
Q. A controlling interest?

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A. I believe so.
Q. Was your father or your uncle a principal participant in the decision to purchase the Lorillard Tobacco Company?
A. I believe they were.
Q. Have --
A. I'm not sure who or how. I was, I think, 17 years old at the time.
Q. Since that time until today, have either your father or your -- or your uncle ever told you why they made the purchase of the Lorillard Tobacco Company when they -- when they made the purchase?
A. Not that I can recall.
Q. It is true, is it not, that the tobacco business has been a very profitable business for Loews over the years?
A. Yes.
Q. And that's true both in terms of revenue generated and income or profits?
MR. WACHTELL: Object to the question as vague and ambiguous and compound.
A. Certainly the profits have been -- have been significant.
Q. And you have been quoted, have you not, as saying that, "We look at Lorillard as the fuel that

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fires the Loews investment engine?"

A. I don't --

You'd have to refresh my memory as to where I said that.

MR. FINZEN: Would you mark this, please.

(Plaintiffs' Exhibit 1266 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Tisch, I am showing you now what's been marked as Plaintiffs' Exhibit 1266. It is a document that is a reprint from the February 1990 issue of Tobacco Reporter containing two stories, one "Profile: Lorillard, New chairman; old ties," authored by Dayton Matlick, and the second, "Profile: Lorillard, Gains made in full-priced brands" by Dayton Matlick, Bates numbers 82842480 through 83.

Do you recall this article?

A. Vaguely.

Q. Let me ask you, if you would, to turn to the third page, Bates numbered 82.

A. Okay.

Q. I'm sorry, 83, one more page over.

A. May I just grab a pen, if I may?

Q. Surely. Watch your mike there.

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A. Okay.

Q. In --

At page Bates numbered 83 as the last two numbers, in the left-hand column, third paragraph, third full paragraph, it says, "'We don't feel we have to apologize for the money we make in this business,' Andrew Tisch says." And that's in quotes. And then it says, "'People ask, quote, What do you do with all the cash? close quote. We haven't put everything back into Lorillard. We look at it as the fuel that fires the Loews investment engine. Without Lorillard, we wouldn't have been able to acquire CNA Insurance or part of CBS or Bulova Corporation or the tankers or oil rigs dot dot dot,' close quote. Do you see that?

A. Yes.

Q. Do you recall this interview?

A. Vaguely.

Q. Do you recall making those statements to the reporter?

A. I don't recall making these specific statements.

Q. Do you have any reason to believe that the quotes are incorrect in the article?

MR. WACHTELL: Object to the question as asked and answered.

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Q. You may go ahead.

MR. WACHTELL: And lacking -- and lacking foundation.

A. I --

Would you repeat the question?

Q. Sure.

Do you have any reason to believe that the quotes are incorrect in the article?

A. No.

Q. And do you agree as you sit here today that the information in quotes is -- is true?

A. I think it's -- it's a characterization of the significant part that Lorillard has played as an investment for Loews.

Q. And turn back one page to the page Bates numbered 82 as the last two numbers. Looking at the left-hand column again, in the second full paragraph --

A. In the top article or bottom article?

Q. The bottom article, left paragraph -- left column, first -- second full paragraph, bottom of the page, where you say, "Its," referring to Lorillard, "Its revenues in 1988 were U.S. 1.818 million...."

MR. WACHTELL: I'm sorry, where -- where are you?

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MR. FINZEN: The left-hand column, bottom of the page, second full paragraph.

MR. WACHTELL: There is no -- oh, second. There is --

I have you. I'm sorry.

Q. "Its revenues," referring to Lorillard, "in 1988 were U.S. 1.818 million," or one billion eight hundred eighteen million, "17 percent of Loews' revenues. After expenses were deducted, slightly over U.S. 351 million, were left as income from operations, before taxes. This was 39 percent of the income from operations of the total corporation." And again, referring there to Loews; is that correct, "total corporation?"

A. I believe so, yes.

Q. Based upon your recollection at the period of time when you were joining Loews as the CEO, was -- are those numbers an accurate characterization of the impact that Loews revenues had on -- I'm sorry, that Lorillard Tobacco revenues had on Loews overall revenues and income from operations?

A. First --

First of all, I was never CEO of Loews.

Q. I'm sorry. Then let me -- let me do the whole question over. I misstated it from the beginning.

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At about the time in 1989 when you were joining Lorillard Tobacco as CEO, do these numbers accurately reflect the financial contribution that Lorillard Tobacco made to Loews Corporation in terms of both percent of revenue and total income from operations?

A. I believe they fairly accurately reflect that.

Q. Do you know what the percentages or actual numbers are today that Lorillard Tobacco contributes to Loews in terms of revenues and income from operations?

A. I don't have those numbers off the top of my head, but I believe that the revenues would be slightly lower as a percent, and the profits from operation would be lower as a percent also.

Q. Do you know how much lower?

A. I don't know.

Q. It's a fair statement, is it not, Mr. Tisch, that the cigarette business has been a very profitable business for Loews over the years?

MR. WACHTELL: I think that was asked and answered about an hour ago.

A. I believe it's a fair statement.

Q. And is it a fair statement that that is why Loews got into the tobacco business in the first place?

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MR. WACHTELL: Object to the form of the question as vague and ambiguous.

MR. FINZEN: You may answer.

MR. WACHTELL: And asked and answered.

MR. FINZEN: You may answer.

A. I think -- I think it would be fair to characterize any investment --

I think it would be fair to characterize any investment that we made as hope -- we hope that it would have the intention of being profitable.

Q. Is it your understanding that the tobacco business has higher profits than other consumer product businesses?

MR. WACHTELL: Vague and ambiguous, objection.

You mean dollar amount? You mean percentage, margins? I don't understand the question.

MR. FINZEN: Well you've made your objection. He can --

MR. WACHTELL: Okay.

MR. FINZEN: He can answer.

A. How -- how do you define --

How do you define that?

Q. How do I define what?

A. The profitability.

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Q. How do you define profitability when you use that term in your business?

MR. WACHTELL: Well the witness is not -- Lacks foundation. Objection.

MR. FINZEN: Go ahead, you may answer.

A. The profitability can be defined any -- any one of a number of ways, percentage gross, percentage margin, overall profits.

Q. All right. As percent margin, would you agree that the tobacco business has higher profitability than other consumer products businesses?

A. I think it probably does.

Q. And as overall profits?

MR. WACHTELL: Object as vague and ambiguous.

Q. Would you --

Would you agree that the tobacco business has higher profits than other consumer businesses?

MR. WACHTELL: Vague and ambiguous, lacks foundation.

A. I don't -- I don't know that that --

I don't know that that's necessarily so.

Q. Mr. Tisch, you have testified before that it is your position that smoking may very well cause lung cancer, heart disease and emphysema, but you're not

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convinced that it does. Is that a correct statement?

MR. WACHTELL: Object to the question as lacks foundation.

A. I believe that's my testimony.

Q. You simply don't know whether it does one way or the other; correct?

A. That's my testimony, yes.

Q. And I will represent to you that last week in the -- in the deposition of Alexander Spears, he testified that he simply didn't know if smoking caused lung cancer, heart disease or any disease in humans. Do you understand that to be Dr. Spears' position?

MR. MONICA: I'm going to object to that, Bruce, and ask that if you're going to paraphrase his testimony, that you read from it instead of trying to paraphrase from it, read from the actual testimony.

Q. Do you understand that to be Dr. Spears' position?

A. If -- if you're telling me that that's what his position is, then I will take that on face value.

MR. WACHTELL: No. I think the question is apart from whatever he testified, do you know that to be or do you understand that to be his position. Is

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that correct?

MR. FINZEN: Yes. Correct.

MR. WACHTELL: Maybe you should repeat the question so the witness can have it in mind.

Q. Yes. Do you --

Do you understand that the position that Alexander Spears takes with regard to the issue of whether smoking causes disease in humans is that he simply doesn't know one way or the other?

A. I believe -- I believe that's his position, yes.

Q. How long has Lorillard Tobacco Company been in the tobacco business?

A. About 237 years.

(Discussion off the stenographic record.)

Q. Mr. Tisch, do you -- do you find it at all odd that a company that has been selling the same product, tobacco, for more than 200 years doesn't know today whether the product causes harm to the people who use it?

A. No.

Q. Can you name one other company, consumer product company that has had a product on the market for any considerable period of time that doesn't know if the product they sell causes illness to its consumers when used in the way that the product's intended to

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be used?
A. I can't name any single company offhand.
Q. If you're not convinced or don't believe that smoking causes disease in humans as a former CEO of Lorillard Tobacco, you would agree, would you not, that it would be reasonable for smokers to also believe that smoking does not cause disease?
MR. WACHTELL: Vague and ambiguous and asking for a conclusion.
MR. FINZEN: You may answer.
A. Would you repeat the question, please?
Q. Sure.
If you are not convinced or don't believe that smoking causes disease in humans as a former CEO of Lorillard Tobacco, you would agree, would you not, that it would be reasonable for smokers to also believe that smoking does not cause disease?
MR. WACHTELL: Misleading. He hasn't said that he doesn't believe that smoking -- he doesn't say that he believes that smoking does not cause disease. I think you're mischaracterizing the witness's testimony.
MR. FINZEN: You may answer.
A. I haven't said that smoking does not cause disease.

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Q. Well I asked you earlier whether you had testified before that it's your position that smoking may very well cause disease but you're not convinced that it does, is that correct, and you said you believe that's your testimony.

A. That's correct.

Q. Okay. And my question to you is: If you are not convinced that smoking causes disease in humans as a former CEO of Lorillard, would you agree that it would be reasonable for smokers to also believe that smoking does not cause disease?

MR. WACHTELL: You're mischaracterizing his testimony when you use the word "also." You're -- you're saying smokers should believe something very different than he has said that he believes or doesn't believe. I object to the question as mischaracterizing the witness's testimony.

And you have it in front of you, Bruce. You should be able to do better.

MR. FINZEN: I -- I do have it, and I'll ask for an answer to the question.

A. Will you repeat the question, please?

Q. Yes.

If you are not convinced that smoking causes disease in humans as a former CEO of Lorillard, would

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you agree that it would be reasonable for smokers to also believe that smoking does not cause disease?

MR. WACHTELL: Object to the question as misleading.

A. I don't --

I don't believe that I have said that I do not believe that cigarette smoking causes cancer or causes disease.

Q. You're not convinced; right? You're not convinced that smoking causes disease in humans; is that a fair statement?

A. That --

That's a fair statement, but that does not believe that I don't believe that it does.

Q. If you're not convinced that smoking causes disease in humans as a former CEO of Lorillard, would it be reasonable for smokers to not be convinced that smoking causes disease?

MR. WACHTELL: Object to the question as asking for speculation, and vague and ambiguous.

MR. FINZEN: You may answer.

A. I don't --

I don't know that it would necessarily be reasonable to draw that conclusion.

Q. And why is that? Why is it reasonable for you

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to not be convinced as CEO, but reasonable for a smoker to believe that smoking causes disease?

A. There's a tremendous amount of information that's out there, and smokers are able to make their own decisions.

(Discussion off the stenographic record.)

BY MR. FINZEN:

Q. Would you agree that as the CEO of a tobacco company, you had access to more information about smoking and health than the normal consumer would have?

A. I --

Possibly.

Q. And even with access to that more information in terms of volume, it's your position that you're not convinced that smoking causes disease in humans; correct?

A. I'm not convinced that it doesn't either.

Q. And yet you believe that it would be -- not be reasonable for someone who is a smoker out there to believe that smoking doesn't cause disease?

MR. WACHTELL: Objection as misleading, and mischaracterizes the witness's testimony. That isn't what he said.

A. Would you repeat the question, please?

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Q. Yes.

If you believe that it would not be reasonable for someone who's a smoker -- I'm sorry.

If you believe that it is not -- you are not convinced that smoking causes disease, would it not be reasonable for someone who's a smoker to also believe that smoking does not cause disease in humans?

MR. WACHTELL: Object to the question, it's mischaracterizing the witness's answer.

MR. FINZEN: You may answer.

MR. WACHTELL: Misleading.

MR. FINZEN: You may answer.

THE WITNESS: Would you repeat the question, please?

MR. FINZEN: Your question --

Your objection is noted. Let's -- let's try to do a question with an answer following it this time, all right, your objection to the question I've asked before and I'm going to ask again.

MR. WACHTELL: Bruce, if the reporter reads it back, I will not find the necessity to object. If you put a fresh question, I'm going to object.

MR. FINZEN: All right. Read the question.

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MR. WACHTELL: Unless you cure the obvious mischaracterization in the question.

MR. FINZEN: Read the question back.

(Record read by the court reporter.)

A. It's a very convoluted question. I don't necessarily believe that it would be reasonable for a smoker to reach the same conclusion.

Q. Do you believe that it is more likely than not that smoking has caused disease in even one person?

A. I believe it's possible.

Q. In a thousand persons?

A. I believe it's possible.

Q. In a hundred thousand persons?

A. I don't know.

Q. In millions of persons?

A. I don't know. The numbers that are bandied about are extremely high by the Surgeon General; I don't necessarily ascribe to the numbers. But, you know, certainly there is a statistical link between smoking and disease, but I've yet to see the -- the causal link.

Q. When you use the term "causal link," what are you referring to?

A. In my mind, you know, I can't look at you and say if you smoke you're going to get disease. You

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know, if you show me a room of a thousand people and say if they all smoke, will X percent get some sort of disease, I think that there is a statistical probability that -- that some will, that X percent will.

MR. MONICA: Bruce, we've been at it an hour now. We haven't taken a break.

MR. FINZEN: I'll be at a breaking point here in a moment.

BY MR. FINZEN:

Q. Are you aware of a single Lorillard Tobacco employee who has ever expressed to you his or her belief that smoking causes diseases in humans?

MR. WACHTELL: Vague and ambiguous. Object to the form of the question.

A. I'm not aware of any such employee, but I don't know that -- that such employee does or does not exist.

Q. You have no personal awareness.

A. I have no personal awareness.

Q. Are you aware of a single Lorillard Tobacco employee who has ever publicly stated that he or she believes smoking causes disease in humans?

A. I'm not aware of any, but that doesn't mean that such a person doesn't exist.

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Q. Are you aware of any public statements, however, by employees?

MR. WACHTELL: Object to the question as vague and ambiguous. Are you incorporating in your present question what was in your last question?

MR. FINZEN: Yes.

A. No. But, you know, I would also say that there are very few public statements by Lorillard employees that I'm aware of on any issue.

Q. Are you at least willing to admit that outside of the tobacco company defendants in -- in these cases and their paid consultants, no credible doctor or scientist disputes that there is a causal link between smoking and disease in humans?

MR. WACHTELL: Object to the question as vague and ambiguous.

A. I -- I don't know that to be a fact.

Q. People like the American Medical Association, the American Cancer Society and other public health organizations who make no money from the sale of cigarettes have all publicly expressed that they believe that smoking causes cancer and other diseases in humans; isn't that correct?

A. That is correct.

Q. Are you aware of any medical organizations or

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medical associations, public medical entities that have taken a contrary position?

MR. WACHTELL: Object to the form of the question as vague and ambiguous.

A. There -- there are none that I'm aware of.

MR. FINZEN: Okay. Let's take a break here.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Tisch, would you agree that a primary duty of a company selling products to consumers is to be truthful in communicating with them about the product?

A. It's one of their duties.

Q. And that as part of the communication, a company should be truthful in its advertisements with regard to its products?

A. Yes.

Q. And that Lorillard, when you were the CEO, you had an expectation, did you not, that consumers would see your advertisements and rely upon them?

MR. WACHTELL: Object to the form of the question as vague and ambiguous, and compound.

A. Will you repeat the question, please?

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Q. Yes.

And at Lorillard, when you were the CEO, you had an expectation, did you not, that consumers would see your advertisements and rely upon them?

A. My expectation is that they would see my advertisements and look favorably on them.

Q. Would you agree that it would be reasonable for consumers to rely upon Lorillard advertisements?

MR. WACHTELL: Object to the question as lacking foundation and vague and ambiguous.

A. I don't know what you mean by "rely."

Q. To see them, believe them and -- and act favorably upon them.

MR. WACHTELL: Object to the question as vague and ambiguous and without foundation.

A. I think they -- that I would expect them to use my advertisements as one -- one part in a very complicated decision about my product.

Q. Would it also have been your expectation that consumers of Lorillard products would be reasonable in relying upon public statements made by Lorillard?

MR. WACHTELL: Object to the question as lacking foundation, vague and ambiguous.

A. Among -- among the many things that are available to them, yes.

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Q. And would that be true for all times in the past up until today?

MR. WACHTELL: Object to the question as vague and ambiguous, compound, and lacking foundation.

A. Certainly I can -- I can attest for the period of time when I was CEO that that was my expectation.

Q. And would you agree that at all times up until today, Lorillard had a duty to tell consumers the truth about the health effects of its cigarettes?

MR. WACHTELL: Calls for a legal conclusion, object to the question.

A. Will you repeat the question, please?

Q. Yes.

Would you agree that at all times up until today, Lorillard had a duty to tell consumers the truth about the health effects of its cigarettes?

MR. WACHTELL: Same objection.

A. I think Lorillard had an obligation to tell the truth.

Q. You mentioned a little bit ago that you reviewed briefly the Frank Statement as part of your preparation for today.

A. That is correct.

Q. Let me show you what has been previously marked

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in this litigation as Sistad Exhibit 2. It is something that purports to be "A Frank Statement to Cigarette Smokers," bears the date January 1954 at the top of the page.

Have you seen this document before?

A. I saw it in preparation.

Q. And --

A. Prior --

Prior to my preparation I'd never seen this document, --

Q. All right.

A. -- to the best of my recollection.

Q. That was going to be my next question. Had --

When is the first time that you recall seeing it? You believe it was during preparation for this deposition?

A. I believe so.

Q. Had you ever heard while you were CEO at Lorillard anyone refer to the Frank Statement, the term "Frank Statement?"

MR. WACHTELL: You should --

A. Not --

MR. WACHTELL: You should exclude, if necessary, any communications with counsel from your answer.

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A. Not to the --

Not that I can remember.

Q. Do you have any recollection while you were the CEO of Lorillard of anyone talking about the public pronouncements that had been made by the tobacco manufacturers at some time in the 1950s?

MR. WACHTELL: Same thing, exclude any conversations with counsel.

A. I don't -- I don't remember any such discussions.

Q. Having had a chance to now review the Frank Statement in preparation, you were -- have become aware that Lorillard was a sponsor of the Frank Statement?

A. I wasn't aware that it was a sponsor. I -- I knew that it had signed the statement. I wasn't sure -- sure how it was characterized.

Q. And you are aware that as part of the statement made to cigarette smokers by the sponsors, they had said that we accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business?

A. I was --

I was made aware of that in preparation.

Q. Okay. And you also became aware that as part of

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the Frank Statement to smokers, the cigarette manufacturers said that we believe the products we make are not injurious to health; correct?

A. That's correct.

Q. You've come to understand that as part of the Frank Statement, that cigarette manufacturers pledged to aid and assist research efforts into the issue of smoking and health?

A. I -- I believe so. I don't -- I don't recall that that was in here, but if you point it out, I'd --

Q. Sure. Take a look at the third column from the left, numbered paragraph one. Says, "We are pledging aid and assistance to the research effort into all phases of tobacco use and health." See that?

A. Uh-huh, yes.

Q. Did you understand when you were the CEO of Lorillard that that in fact was something that the cigarette manufacturers were doing through a joint effort of some sort?

MR. WACHTELL: Object to the question as vague and ambiguous.

A. Did I understand when I was --

I understood that there was some funding of research going on.

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Q. Through what entity?
A. I believe through an entity called The Council for Tobacco Research.
Q. And was Lorillard a member of that while you were the CEO of the company?
A. I believe they were.
Q. Did you have any position with the CTR, you personally?
A. I did not. I don't -- I don't believe I did.
Q. Did you have any position with any other industry organization or association while you were CEO of Lorillard?
A. I was on the Executive Committee of The Tobacco Institute.
Q. How long did you serve in that capacity?
A. I believe pretty much my entire tenure.
Q. And what role did The Tobacco Institute play while you were a member of the Executive Committee in the -- in the tobacco and smoking -- I'm sorry, in the smoking-and-health question, if any?
MR. WACHTELL: Objected to as vague and ambiguous.
A. The Tobacco Institute was the lobbying -- legislative lobbying arm of The Tobacco Institute -- I'm -- I'm sorry, of the tobacco industry.

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Q. And what role did you have in that aspect of their -- of their duties, the lobbying aspect?
A. What do you mean, "what role?"
Q. Well did you play any role personally in forming lobbying positions or legislative positions?
A. Serving on the Executive Committee, I approved of a lot of the issues that were supported by The Tobacco Institute.
Q. With regard to the Frank Statement, did you also come to learn in your review of it in preparation for this deposition that the sponsors said that the reason the statement was issued is because they believed that people were entitled to know where they stand on the issue of smoking and health?
A. I didn't come to learn that specifically, but if it's in here, I --
Q. Take a look at the last paragraph in the third column from the left. Says, "This statement is being issued because we believe the people are entitled to know where we stand on this matter and what we intend to do about it." See that?
A. Yes.
Q. And did you have any or come to any understanding in terms of what it was that the sponsors of the Frank Statement did with regard to

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that commitment of what they were going to do about it, after the statement was issued?

MR. WACHTELL: At any time after or immediately after?

Q. At any time after did you have any --

A. I -- I first saw this statement, I guess, last Thursday, that was the first I had heard of it to my recollection, so I can't -- I can't characterize it in any way.

Q. Would you --

Would you agree that a company that adopted an interest in people's health as a basic responsibility, paramount to every other consideration in its business, should tell the truth about smoking and its addictiveness to the consumers of its cigarettes?

MR. WACHTELL: Compound, objection, vague and ambiguous.

A. Will you repeat the question, please?

Q. Yes.

Would you agree that a company that's adopted an interest in people's health as a basic responsibility, paramount to every other consideration in its business, should tell the truth about smoking and its addictiveness?

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MR. WACHTELL: Same objection.
A. I believe that they should tell the truth.
Q. And would you agree that a company that adopted an interest in people's health as a basic responsibility, paramount to every other consideration in its business, should tell the truth about smoking and its relationship to disease in humans?
MR. WACHTELL: Same objection.
A. I believe it's the company's obligation to tell the truth.
Q. If, when you were CEO of the company, you believed that cigarettes were addictive, would you have told the public?
MR. WACHTELL: Object to the question as calling for a legal conclusion, and lacking foundation, and speculative and hypothetical.
A. I think you're jumping to -- to a conclusion here that I don't necessarily agree with.
Q. I understand. The question is if you believed at any time while you were the CEO that smoking was addictive, would you have told consumers of Lorillard products?
MR. WACHTELL: Same objections.
A. You know, I -- I don't know --

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I don't know how to answer that question. It's very, very speculative, and I have not become convinced of -- that it's addictive.

Q. Well I understand. But if you had, would you have told the consumers of your products?

MR. WACHTELL: Object to the question, vague and ambiguous, speculative, lacks foundation, and hypothetical.

A. You know, I -- I think it's -- you're -- you're asking me --

MR. WACHTELL: And legal conclusion.

MR. FINZEN: You know, Herb, all objections are preserved with the word "Objection, form." Every -- every objection you've been making is preserved in this litigation by simply a one-word statement of the basis for your objection, "form."

MR. WACHTELL: Is that the case?

MR. FINZEN: Yes.

MR. WACHTELL: Because I just --

MR. DOCHERTY: I believe that's incorrect.

MR. WACHTELL: I just came off a California deposition where I was specifically directed by the judge that such an objection was insufficient and that I had to specify the grounds.

MR. DOCHERTY: Objections to the form of

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the question are preserved by the statement, "Objection, form of the question," but other objections have to be made separately, as I understand.

MR. FINZEN: Well --

MR. DOCHERTY: Relevance objections are preserved by --

MR. FINZEN: My understanding --

MR. DOCHERTY: -- objections to the form.

MR. FINZEN: I understand. I understand. But --

MR. DOCHERTY: You said all objections.

MR. FINZEN: Well all objections of the kind that are being made, vague, ambiguous, et cetera, et cetera, those are -- those are all form.

MR. WACHTELL: Well I don't want to -- I don't want to -- I don't want to waive anything here.

MR. FINZEN: No, you're --

MR. WACHTELL: As I say, I just came off a proceeding where I was explicitly instructed by the court that if I simply said objection to form, that that was a waiver and I was not protecting a record.

MR. FINZEN: Well in this situation, all of the form objections you've been making are taken care

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of by the -- by the word "form," and it will --

MR. WACHTELL: Okay.

MR. FINZEN: -- speed this up considerably.

MR. WACHTELL: Well it may -- it may speed up it up, but somehow I think you're entitled to know why I think there's something wrong with it. And I'm not --

MR. FINZEN: That's up to me to ask.

MR. DOCHERTY: And he is stating the grounds of the objection.

MR. WACHTELL: I think I'm entitled to state the grounds. I am certainly not doing anything that remotely could be suggesting answers to the witness or coaching the witness. I am keeping my objections very -- very tight.

MR. DOCHERTY: Speaking objections are prohibited by the court order, but stating the basis of the objection in the way that Mr. Wachtell has been --

MR. FINZEN: Well I -- I'm --

MR. DOCHERTY: -- is fine.

MR. FINZEN: I'm simply suggesting that it is unnecessary as a form objection to do anything more than say "form."

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MR. WACHTELL: I -- I hear you, Bruce.

You know, we've practiced law for a long time, we get into a habit; it's hard to break it.

BY MR. FINZEN:

Q. I was asking you a question about when you were CEO, if you had believed that nicotine was addictive, would you have told consumers, and you said, "I never came to that conclusion." I said, "I understand that. My question is: If you believed at any time while you were CEO that nicotine was addictive, surely you would have told that to consumers of Lorillard products; would you not?"

MR. WACHTELL: Objected to as vague and ambiguous, speculative, lacks foundation, hypothetical, and calls for a legal conclusion.

A. I --

You know, it's -- it's a very -- very speculative question and I don't know what I would have done.

Q. If at any time while you were CEO of Lorillard you had believed that cigarettes cause disease of any kind in humans, you would have advised consumers of Lorillard products of that; would you not?

MR. WACHTELL: Same objections.

A. It's very speculative. I don't know what I

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would have done.
Q. And by that answer, do I assume you mean that you may have and you may not have?
A. That means I -- I don't -- I don't want to speculate as to what I would have done.
Q. Now in April of 1994 you testified before a congressional subcommittee along with the CEOs of all of the other tobacco companies; correct?
A. That is correct.
Q. And you gave both prepared testimony as well as answered questions from committee members; is that correct?
A. That is correct.
Q. What did you do to prepare for your congressional testimony in April of 1994?
A. I sat with my lawyers and discussed the testimony that I was going to give, and tried to prepare myself as much as possible for what I had to do.
Q. Which lawyers did you sit with when you say you sat with your lawyers?
A. There were a number of different lawyers. I had some lawyers from Shook, Hardy & Bacon, some from Lorillard, and I believe there were some from Arnold & Porter, I believe some from Swidler & Berlin --

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Q. Any other lawyers --
A. -- possibly.
Q. -- that you can recall meeting with?
A. There -- there were --
I'm sure there were more than that. Those are the ones that come to mind first.
Q. Did you meet with any of the other CEOs before the hearing?
A. No.
Q. About the hearing, that is.
A. No.
Q. Did you meet with any other Lorillard employees before the hearing?
MR. WACHTELL: Other than counsel?
MR. FINZEN: Other than counsel, correct.
A. I don't recall specifically whether I did or not. The -- the only one could possibly have been Dr. Spears, but I'm not sure -- I don't recall if I met with him specifically about this or not.
Q. Did you make a written submission that was filed with the committee?
A. Yes.
Q. You personally?
A. Yes, I did.
Q. Who prepared that written submission?

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A. The lawyers prepared it, and then I reviewed it.
Q. Did you personally perform any what I will call due diligence to verify things that appeared in your written statement?
MR. WACHTELL: Objected to as vague and ambiguous.
A. I asked certain questions surrounding some of the statements.
Q. And you asked those questions of your lawyers?
A. To the best of my recollection, that is correct.
Q. Do you recall asking questions about things that were in your written statement to the Waxman Committee of any Lorillard employees other than lawyers?
MR. WACHTELL: I will -- I think the question is ambiguous. You mean at that time, or has he ever?
MR. FINZEN: At that time, before the -- before the hearing.
A. The only one that I might have asked, and I can't remember whether I spoke with him directly or not, would have been Dr. Spears.
Q. Did you review any company documents in preparation for the testimony at the Waxman Committee?

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A. I might have. I don't recall any.
Q. You don't recall whether you saw any Lorillard scientific studies?
A. I don't believe I saw any scientific studies.
Q. Do you recall seeing any scientific articles before your testimony?
A. Not that I can recall.
MR. FINZEN: Do you have a copy of this we can mark?
MR. MONICA: What is that, Bruce? Is that the --
MR. FINZEN: These are the things that were produced today.
MR. MONICA: We can --
MR. WACHTELL: Yeah, sure. Here's another copy, referring to 87921086 through 93.
MR. FINZEN: Would you mark this next, please.
(Plaintiffs' Exhibit 1267 was marked for identification.)
BY MR. FINZEN:
Q. Mr. Tisch, I'm showing you now what's been marked as Plaintiffs' Exhibit 1267. It is a group of handwritten notes that were produced by your counsel this morning, and it bears Bates numbers 87921086

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through 093.

When is the first time that you saw this document?

A. April of '94.

Q. Whose handwriting is on this document?

A. It's mine.

Q. And it appears in this exhibit as a series, usually three groupings of writings on each page. Was it prepared on an eight-and-a-half-by-11 page like this when it was written?

A. No.

Q. How was it prepared at the time that you wrote it?

A. On three-by-five cards.

Q. And this is a xerox of those cards laid out on a -- on a xerox machine?

A. That is correct. It's also in alphabetical order backwards.

Q. Alphabetical order --

A. The last -- last page should be the first.

Q. Alphabetical order backwards by topic?

A. By topic.

Q. Okay. Tell me about how you went about preparing the cards that -- that you wrote.

A. These were my -- kind of my -- my reminder

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cards. As we discussed various topics in the hearings, based on the possible questions that could be raised, these were the outlines of the answers framed in a way that I did it myself that I would have been very comfortable answering within that framework.

Q. How is it that the information you wrote on these cards came to be in your possession or your knowledge?

A. In discussion with my lawyers in preparation for the hearings.

Q. Was this done contemporaneously with the meetings that you had with your lawyers? "This," by the preparation of these cards I mean.

A. Yes.

Q. And approximately how long did you meet with your lawyers in preparation for the Waxman hearing?

A. Couple of times before the hearings.

Q. For what period of time each?

A. Few hours couple of days before, and then the day before about -- for good part of the day.

Q. Did you prepare these cards from notes, other notes that you had taken during the course of the meetings that you're referring to now?

A. I may have.

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Q. Do you know whether the other notes are still in existence?
A. I would doubt it.
Q. As you prepared these cards, were they reviewed by anyone before the testimony at the committee other than yourself?
A. No, I don't -- I don't believe so.
Q. There's no date that I see on any of these cards or these pages. Do you know approximately how long before the hearing date itself these cards were prepared?
MR. WACHTELL: Asked and answered.
A. One -- one to two days.
Q. And just so the record is clear, is there any information that appears on these cards that did not come from the meetings that you have already described having with counsel in preparation for the testimony?
MR. WACHTELL: Vague and ambiguous.
A. Not that I know of.
Q. Let me show you what has previously been marked in this litigation as Plaintiffs' Exhibit 1226. It is a transcript of the hearing that took place on April 14, 1994 before the House Energy and Commerce Committee, Subcommittee on Health and the

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Environment, regarding nicotine and cigarettes, and it bears Bates numbers ATX -- (clearing throat) excuse me -- 030277064 through 218.

You have seen this document before?

MR. WACHTELL: All of it or part of it? Which is your question?

MR. FINZEN: All of it as it exists.

A. This particular document? I -- I've seen the transcript in other forms. I've never seen this particular document.

Q. You have seen the transcript of the hearing of April 14, however, in -- laid out in a different format?

A. I believe -- I believe I have, yes.

Q. And when you were testifying on April 14 of -- of 1994 in front of the committee, you understood that you were delivering a public statement on behalf of Lorillard; --

MR. WACHTELL: Object to the question --

Q. -- did you not?

MR. WACHTELL: -- as vague and ambiguous and as misleading.

A. I understood that I was delivering a statement on behalf of Lorillard.

Q. And you were delivering that statement not --

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not just to the committee members who were there, but to the public at large; correct?

A. I understood I was delivering it to the committee and that the public would be viewing it.

Q. And that there were news media present in the hearing room that day. You knew that?

A. Yes.

Q. And you expected as a result of that that what you said would be reported widely to the public; did you not?

A. I expected that what I said would be reported to the public.

Q. Turn, if you would, please, to page 22 of the transcript.

A. May I take this apart?

Q. Sure. Whatever makes it easiest for you.

A. Page --

Q. Twenty-two, at the bottom.

A. You have to help me with this. Which numbering system are you using?

Q. I'm looking at the page numbers now on the actual transcript at the bottom of -- of each page, not the Bates numbers.

A. That's the one with starts with, "You will recall that Dr. Spears...?"

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Q. Yes, correct.

Near the top of the page there --

MR. WACHTELL: Wait one second. Where -- where -- oh, you're --

That's the page that starts that way.

MR. FINZEN: Correct.

MR. WACHTELL: Okay, fine.

Q. Near the top of that page your prepared statement for the day was delivered. Do you see that, where your name appears?

A. Right.

Q. And at the outset of your testimony, you -- you said, "At the outset, I want to reaffirm and emphasize that Dr. Spears -- what Dr. Spears said during his appearance on March 25 and to make it absolutely clear to the Congress and to the public that the level of nicotine in the products manufactured and sold by Lorillard is solely determined by the tobacco that we buy and the blending of different tobaccos used in our manufacturing." Do you see that?

A. Yes.

Q. When you made that statement --

MR. WACHTELL: You left out a word, Bruce, when you read it.

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MR. FINZEN: I'm sorry.

MR. WACHTELL: "...blending of the different tobaccos...."

MR. FINZEN: I'm sorry,.

Q. "...blending of the different tobaccos used in our manufacturing." Do you see that?

A. Yes.

Q. And when you made that statement, were you aware that the blending of tobaccos is one way that Lorillard was aware that the nicotine levels could be controlled in a cigarette?

MR. WACHTELL: Object to the question as lacking foundation and misleading.

A. Well first of all, you have -- you have to understand I'm not a scientist, I'm not a manufacturing person, but, you know, I was vaguely -- I was and am vaguely familiar with the manufacturing process. But I wouldn't characterize my awareness as -- as how you characterize it.

Q. Were you aware that the blending of tobaccos was one way that Lorillard knew that the nicotine-to-tar ratio could be controlled in a cigarette?

MR. WACHTELL: Object to the question as lacking foundation and misleading.

A. I don't know that I was specifically aware of --

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aware of that. I knew that the blending of tobacco -- the choice of tobacco, the blending of tobacco would be partial -- partially determinant in the overall tar and nicotine level, but beyond that I can't characterize it as -- as the way you say it.

Q. Let me show you what has previously been marked in this litigation as Plaintiffs' Exhibit 1194. This is a document on Lorillard letterhead, memorandum dated February 8, 1971 from S. T. Jones to Dr. A. W. Spears and Mr. C. L. Tucker, Jr., bearing Bates number 00776195 through 201.

Have you seen this document before?

A. Not that I know of.

Q. Do you know who S. T. Jones is?

A. Yes.

Q. Who is that?

A. Tom Jones, who at one point headed up market research, consumer market research in New York, who is now in the research department in -- in Lorillard Greensboro.

Q. And you referenced Dr. Spears already this morning. Who is Mr. Tucker, if you know?

A. Mr. Tucker is Charlie Tucker, who I worked with in chewing tobacco and little cigars in 1973 and 1974.

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Q. What title did he have at the company?
A. I don't know.
Q. Is he involved in research?
A. I believe he was.
Q. About --
In the third paragraph of this document on the first page, the author in the second sentence says, "It has become apparent from the available data that the top sellers, e.g. Winston, Salem, Marlboro, and Kool are all fairly high in smoke nicotine." Do you see that?
A. Yes.
Q. Were you, while you were CEO of the company, aware --
MR. WACHTELL: Are you going to read the next sentence?
MR. FINZEN: I'll get there.
Q. While you were CEO of the company, were you aware that those particular brands were top sellers?
MR. WACHTELL: Wait a minute. You're -- you just switched like 15 years.
MR. FINZEN: I know. I'm asking the question. I'd like your answer.
MR. WACHTELL: Object to the question as --
I'll withdraw my objection. Witness can answer.

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A. Repeat the question, please.
Q. Were Winston, Salem, Marlboro and Kool top sellers when you were the CEO of the company?
A. They were among the top sellers.
Q. Did you have an understanding at that time while you were CEO that those brands were all fairly high in smoke nicotine?
A. I do not believe I did.
Q. And if you look two sentences --
A. I don't -- I don't know, you know, what smoke nicotine is, so --
Q. You're not aware of what the term "smoke nicotine" means?
A. That is correct.
Q. Is that something you ever knew?
A. I don't believe so.
Q. So the whole time you were at Lorillard, either in marketing or as the chief executive of the company, no one ever told you what "smoke nicotine" meant.
A. Not -- not to my recollection.
Q. And you never had occasion to discuss the issue of smoke nicotine in Lorillard products with anyone while you were at the company.
MR. WACHTELL: Your question is using those

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precise words.

MR. FINZEN: Yes.

MR. WACHTELL: Okay.

A. Not that I can remember, no.

Q. You never asked anyone about smoke nicotine?

A. To the best of my recollection, I never knew to ask anybody about smoke nicotine.

Q. And no one ever came to you with smoke nicotine as any kind of an issue for -- for you to consider.

A. Not that I can remember, no.

Q. In this memorandum the author also says in the third paragraph, "The one other parameter common to the top sellers is the ratio of smoke nicotine to, quote, tar, close quote." Do you see that?

A. "The one other" --

I see that, yes.

Q. While you were CEO -- CEO of Lorillard, did you ever have a discussion with anyone about the ratio of smoke nicotine to tar?

MR. WACHTELL: Object to the question as asked and answered.

A. Not that I can recall. Can I --

May I just ask you a point of clarification?

Q. Sure.

A. When you say "smoke nicotine," are you saying --

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is --

Is that the same as nicotine?

Q. I'm -- I'm assuming that that's how the author meant it here, that it -- it was nicotine in cigarette smoke. I don't know any other way to characterize it.

A. I -- you know, I --

This is the first I've seen of this memo, so --

Q. I understand. And that --

And my question had as part of it that it was indeed the nicotine in cigarette smoke.

MR. WACHTELL: Oh. I object to that as vague and ambiguous. I mean you don't know what it means and he doesn't know what it means, and it's not a customary term or phrase.

A. You know, I -- I -- I mean I've -- I've certainly heard of nicotine, but I've never heard of it referred to as smoke nicotine.

Q. Well you understand, don't you, that nicotine exists in tobacco?

A. That I understand.

Q. And that nicotine, when it is -- I'm sorry.

And tobacco, when it is burned, provides nicotine in the smoke that is consumed by smokers. You understand that?

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A. Yes.
Q. And would you think it a fair characterization to differentiate between nicotine in the tobacco as opposed to nicotine in the smoke in trying to describe the difference between those two?
MR. WACHTELL: Object to as vague and ambiguous.
A. I -- I -- I think it's a fair characterization. I -- like I said, I've never seen, to the best of my recollection, anything breaking it down between, you know, smoke nicotine and tobacco nicotine.
Q. Were you aware of, at some point in time, things published by cigarette manufacturers called nicotine and tar levels in cigarettes?
A. Yes.
Q. Did you understand that what was being reported there was the measure of both tar and nicotine that was delivered in the smoke of a cigarette?
MR. WACHTELL: Object to the question as vague and ambiguous and misleading, and lack of foundation.
A. I understood that it was the level of tar and nicotine derived from the combustion of a cigarette.
Q. And in that way, it came to the person smoking the cigarette from the smoke itself?

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MR. WACHTELL: Same objections.

A. Well it came -- came to the machine that was measuring it in that particular instance.

Q. In that case it would have been a machine simulating some sort of smoking behavior; is that right?

A. There's a machine simulating some sort of smoking behavior.

Q. And so it's your understanding that the tar and nicotine levels, then, were the levels of those two items delivered in the smoke itself?

A. Yes.

Q. With that in mind, did anyone, while you were CEO at Lorillard, ever talk to you about the ratio of smoke nicotine to tar in Lorillard products?

MR. WACHTELL: Object to the question as contradicting itself and asked and answered, and misleading, and vague and ambiguous.

A. Not that I can recall.

Q. Turn, if you would, please, to the second page of the memorandum itself. Under the "Conclusion" section near the bottom of the page --

A. Yes. The left side is a little bit broken up on my -- my copy.

Q. The --

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Source: http://www.industrydocuments.ucsf.edu/docs/sghd0001

Under the "Conclusion," the first sentence says, "The ratio -- The ratio of nicotine to tar can be controlled by blending high nicotine and tar grades with low ones resulting in a net gain of nicotine delivery over tar level." Do you see that?

A. Yes.

Q. Were you aware that Lorillard believed that the ratio of nicotine to tar can be controlled by blending, resulting in a net gain of nicotine delivery over tar, at the time that you gave your testimony to the Waxman hearing?

MR. WACHTELL: Object to the question as misleading and lacks foundation.

A. I was not aware of --

I was not aware of that.

Q. You go on in your testimony in the second paragraph on page 22, you say, "The tar and nicotine yields of our products are determined by a combination of the tobacco blends and the physical characteristics which constitute the construction of the cigarette, namely length, circumference, paper porosity, filter, tip ventilation, and tobacco density." Do you see that?

A. Yes.

Q. You then say, "Nicotine levels follow tar levels

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and are not raised or reduced for particular brands." Do you see that?

A. Yes.

Q. Were you aware that Lorillard knew, from research it had done, that that statement was not true?

MR. WACHTELL: Object to the form of the question as lacking foundation and misleading.

A. Is the statement not true?

Q. Were you aware that, by -- on the basis of research that was done, Lorillard knew that that statement was not true?

MR. WACHTELL: Same objections.

A. I -- I don't know that the statement is not true.

Q. Were you aware that Lorillard had done significant research showing that, in various ways, the level of nicotine to tar in a cigarette could be manipulated?

MR. WACHTELL: Object to the question as lacking foundation and misleading.

A. I -- I don't know what you mean by "significant research."

Q. Were you aware that Lorillard had done any research that showed that, in various different ways,

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the level of nicotine to tar in a cigarette could be manipulated?

A. I knew that there was a -- that the day before the hearings Congressman Waxman had said that there was some research done, I forget how it was characterized, but I knew that there was some sort of research done that he found -- he found questionable. I'm not sure if it was this particular piece of research or not.

THE REPORTER: We have to change tape. Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Looking again at Plaintiffs' Exhibit 1194, the one we looked at just a moment ago -- you should have it still in front of you there -- that -- that's dated February 8, 1971. Do you see that?

A. Yes.

Q. Turning to the second page of that memo, again, at the conclusion that we looked at a moment ago, the author reported to Dr. Spears and Mr. Tucker on that date that the ratio of nicotine to tar can be controlled by blending, resulting in a net gain of nicotine delivery over tar level; right?

MR. WACHTELL: I'm sorry.

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MR. FINZEN: See that?

MR. MONICA: Are you quoting from this piece?

MR. FINZEN: Yes.

A. This is the conclusion of the first sentence?

Q. Yes.

A. I see that.

Q. And therefore, the statement you made that nicotine levels follow tar levels is not necessarily true; correct?

MR. WACHTELL: Object to the form of the question as lacking foundation and misleading, very misleading.

A. I don't know.

Q. No one had made you aware of this particular memorandum, including Dr. Spears, at any time before you testified?

A. I believe that's correct.

Q. Let me show you now what's been previously marked in this litigation as Plaintiffs' Exhibit 1195. It is a memorandum bearing Bates numbers 80634635 through 642, and it is dated on the last page in the lower left November 13, 1973, and above that it has the initials AWS:r -- rcb.

Have you ever seen this document before?

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THE REPORTER: Just a moment, please.

(Discussion off the stenographic record.)

(Record read by the court reporter.)

A. Not to my knowledge.

Q. The initials AWS, those are the initials for Dr. Spears; is that correct?

A. That would be Dr. Alexander W. Spears. It's nobody else that I would know of.

Q. Turn, if you would, please, to page three of the memorandum. At the top of the page the author says, "The third element in acceptance is physiological, being comprised largely of the nicotine-induced stimulation and thought coordination effects." Do you see that?

A. Yes.

Q. When you were testifying before the Waxman subcommittee, were you aware that there was a physiological component to nicotine when it was inhaled by human beings?

MR. WACHTELL: Question is vague and ambiguous and lacking foundation.

A. I wouldn't --

I wouldn't characterize it as that.

Q. I'm not sure if I understand your answer. You're saying you are not aware --

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A. I -- I'm --

I'm not sure that I would characterize that I was aware -- aware that nicotine was the one that provided the stimulation.

Q. The second paragraph on page three says, "The research activities on the physiological element are concerned with nicotine. The quantity of nicotine required for the stimulus is mediated to the nicotine content of the cigarette by several factors: (1) absorption rate into the bloodstream, once the nicotine has deposited on the respiratory tract; (2) fraction of inhaled nicotine which is deposited in the res -- in the respiratory tract, paren, (pH dependence); (3) concentration of nicotine in the smoke and (4) transfer rate of nicotine from the tobacco to the mainstream smoke." Do you see that?

A. Yes.

Q. When you testified before the Waxman Committee, did you understand that nicotine was absorbed into the bloodstream once it had been deposited in the respiratory tract?

A. Not really. I -- you know, it was -- I --

I wasn't aware of a lot of the physiology of -- of smoke. I'm -- like I said many times, I'm not a scientist and was really not -- not overly aware of

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the physiology of -- of smoking.
Q. Were you aware at the time that you had testified before the Waxman Committee that the quantity of nicotine required for physiological stimulation depended upon the fraction of inhaled nicotine which was deposited in the respiratory tract?
MR. WACHTELL: Object to the question as vague and ambiguous and without foundation.
A. I -- I don't think I was aware of that.
Q. Were you aware that the stimulus, physiological stimulus of nicotine was in any way dependent upon the pH of the -- of the smoke?
MR. WACHTELL: Same objections.
A. I don't think so.
Q. Were you aware that the physiological stimulus of nicotine was dependent in any way on the concentration of nicotine in the smoke before you testified before the Waxman Committee?
MR. WACHTELL: Same objections.
A. I don't believe so.
Q. Were you aware that the physiological stimulation of nicotine was in any way dependent upon the transfer rate of nicotine from the tobacco to the mainstream smoke before you testified before the

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Waxman Committee?

MR. WACHTELL: Same objections.

A. I don't believe so.

Q. Were you aware that Lorillard had done research on any of those issues before you testified before the Waxman Committee?

A. I don't believe I was aware of that.

Q. This memorandum continues in the next sentence saying, "Also, it would be useful to have a wider range of control over nicotine than now exists, through the selection of tobacco and the physical construction of the smoking article." Do you -- do you see that?

A. Yes.

Q. Were you aware that Lorillard believed that it would be useful to have some wider range of control over nicotine than currently existed through tobacco selection and physical construction of cigarettes before you testified before the Waxman hearing?

MR. WACHTELL: Object to the question as lacking foundation and vague and ambiguous.

A. I don't believe I was aware of that.

MR. WACHTELL: And it also misstates the sentence you just read.

Q. In your testimony in the second paragraph that

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we looked at a moment ago, you testified to the committee that "The tar and nicotine yields of our products are determined by a combination of tobacco blends and the physical characteristics which constitute the construction of the cigarette," and then you name some of those. Do you see that?

A. Yes.

Q. Were you aware that, at the time you testified, Lorillard had done research in the past into various ways to control the level of nicotine over cigarettes other than through blending and cigarette construction?

MR. WACHTELL: I don't -- I don't know that that question is comprehensible. I don't think it is.

MR. FINZEN: Let me restate it then.

Q. Were you aware that at the time you testified before the Waxman Committee, Lorillard had done research in the past into various ways to control the level of nicotine in cigarettes other than through blending and cigarette construction?

MR. WACHTELL: Object to the question as lacking foundation. You may answer.

A. I don't believe I was aware of that.

Q. This memorandum goes on to say, "Within one

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year, it is expected that tobacco modifications can be made to optimize absorption of smoke nicotine."

MR. WACHTELL: You just switched back to 1195, just for the record.

MR. FINZEN: Correct.

Q. "Technology for increasing the nicotine content of cigarettes can be developed through recovery of nicotine lost in tobacco drying operations within two years, and new varieties of tobacco can be grown which are essentially free of nicotine within two years. It is our present intent to develop low nicotine brands, with the maximum physiological impact, within the next year." See that?

A. Yes.

Q. Before you testified at the Waxman Committee, were you aware that sometime after November of 1973, Lorillard had done research into ways to develop low nicotine brands with maximum physiological impact?

MR. WACHTELL: The record -- the -- excuse me. I object to the question as lacking foundation.

A. Was I aware at the time of the Waxman hearing?

Q. Yes.

A. No, I was not.

Q. Were you aware before you testified that Lorillard had set out in its 1973 one-, three- and

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five-year projection of major projects to undertake research with regard to, to explore possibilities of modifying tobacco nicotine by chemical treatments or additives?

MR. WACHTELL: Object to the question as lacking foundation and vague and ambiguous. You may answer.

A. Will you repeat the question, please?

Q. Yes.

Were you aware that Lorillard had set out as a goal in its one-, three- and five-year projection of major projects to undertake a research project to explore the possibilities of modifying tobacco nicotine by chemical treatments or additives?

MR. WACHTELL: You just changed the question. You said you were going to repeat it, but you changed it.

MR. FINZEN: Well he can answer the one I asked, whether it's the same or different.

MR. WACHTELL: Well it's different, so maybe you better repeat it again. You've asked two different questions.

MR. FINZEN: Do you have the question in mind?

THE WITNESS: I do not. Will you please --

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MR. FINZEN: Yes.

THE WITNESS: -- repeat the question? Give me a question.

Q. Were you aware that Lorillard had set out as a goal in its one-, three- and five-year projection of research projects to undertake to explore possibilities of modifying tobacco nicotine by chemical treatments or additives?

MR. WACHTELL: Lacks foundation. You may answer.

A. I do not believe I was aware of that.

Q. Were you aware generally that Lorillard did one-, three- and five-year projections of research projects that would be undertaken?

MR. WACHTELL: In what -- in what timeframe?

MR. FINZEN: At any time when he was with the company.

MR. WACHTELL: Oh. Are you asking him did they do it while he was with the company, or was he aware that they had ever done it? What is the question?

MR. FINZEN: While he was at the company.

A. Was I aware --

Q. That Lorillard did one-, three- and five-year

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projections with regard to major research projects.
A. I was aware that we did look at long-term projects in -- in all of our departments. I wasn't aware necessarily what they were, specifically.
MR. MONICA: Bruce, we've been going, I believe, for about an hour. Would it be appropriate to take a break now?
MR. FINZEN: Let -- let's go a little bit longer if we can and -- and try to see if we can move along at a quicker pace.
BY MR. FINZEN:
Q. Let me show you what has previously been marked in this litigation as Plaintiffs' Exhibit 1197.
A. Will I need any of these again?
Q. You may. You want to just set them to the side there? We may refer to them again.
A. What about my testimony?
Q. Same, you can --
Actually, keep that in front of you. We are going to be referring to that.
A. Okay.
Q. Showing you now what's been marked as Plaintiffs' Exhibit 1197, it is a document that on the first page says "RESEARCH, 1 - 3 - 5 YEAR PROJECTION OF MAJOR PRODUCTS -- PROJECTS," it's dated

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November 2, 1973 and it bears Bates number 00037787 through 800.

Have you seen this document before?

A. I don't believe I have.

Q. Turn if you would, please, to the third page, has page number three at the top. It's actually the fourth page of the document.

A. This was dated 1973, so I guess at that point I was an assistant brand manager.

Q. Under Arabic number two, title "Tobacco Modification" --

Do you see that?

A. Yes.

Q. -- first sentence says, "A program is currently underway to explore the possibilities of modifying various physical and chemical properties of tobacco by means of chemical treatments or additives." See that?

A. Yes.

Q. "Three areas of -- Three areas are of current interest; control of apparent density of cut tobacco, control of cigarette burning rate, and control of nicotine delivery." Do you see that?

A. Yes.

Q. "The ability to control these parameters will

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permit the design of low tar products with acceptable burning rates having specified nicotine deliveries." Do you see that?

A. Yes.

Q. At any time before you testified at the Waxman hearing, were you aware of research projects in existence at Lorillard that dealt with the ability to control nicotine delivery by chemical additives or treatments?

MR. WACHTELL: Object to the form of the question as without foundation, vague and ambiguous.

A. No, I wasn't.

MR. WACHTELL: I'm sorry, I meant to say and lacking foundation, if I didn't.

MR. MURPHY: You did.

MR. WACHTELL: Oh, I did. I'm sorry.

Q. Were you aware that -- at any time before you testified before the Waxman Committee, that there were research projects at Lorillard looking at ways to design low tar cigarettes having specified nicotine deliveries?

MR. WACHTELL: When you say "were," do you mean had been? Are you talking about currently or in the past?

Q. At any time up until the time that you testified

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were you aware?

MR. WACHTELL: I object to the form of the question as lacking foundation and vague and ambiguous.

A. Just repeat the question for me, please.

Q. Yes.

Were you aware at any time before you testified before the Waxman Committee that there were research projects at Lorillard looking at ways to design low tar cigarettes having specified nicotine deliveries?

MR. WACHTELL: Same objections.

A. No, I do not believe I was aware of that.

Q. Then going to the next paragraph, talks about the personnel commitment in the first sentence, and then says, "The first year will be occupied by the investigation of various possible treatments or" --

A. I'm not -- I'm not up with you yet. Where -- where are you?

Q. Last paragraph, second sentence.

A. Okay.

Q. "The first year will you occupied by the investigation of various possible treatments or additives for volume and burn rate control. The following two years will be used to devise methods for control of nicotine delivery and to develop

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practical large scale tobacco treatment methods." Do you see that?

A. Yes.

Q. Were you aware of research projects at Lorillard at any time before you testified before the Waxman Committee looking into methods for control of nicotine delivery?

MR. WACHTELL: Object to the form of the question as vague and ambiguous and lacking foundation.

A. No, I was not, I don't believe.

Q. Were you aware at any time before you testified before the Waxman Committee of a formal research plan that had been undertaken by Lorillard known as the nicotine augmentation project?

A. At any time prior to my testimony before Waxman?

Q. Yes.

A. No, I was not.

Q. Have you heard of such a project since your testimony before the Waxman Committee?

A. I have.

Q. When is the first time you heard about it?

A. In my preparation for this deposition.

MR. MONICA: Bruce, I really think we're at a good point to take a break now.

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MR. WACHTELL: Yeah, I think we should take a break.

MR. FINZEN: Sure, we can do that, although I would like --

We can go off the record.

THE REPORTER: Off the record.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Tisch, let me show you what's previously been marked in this litigation as Plaintiffs' Exhibit 1201.

A. What should I do with these?

Q. You can keep your transcript, please, testimony in front of you. You can set the others to the side for now.

Plaintiffs' Exhibit 1201 is a confidential memorandum on Lorillard letterhead dated May 4, 1976 from H. J. Minnemeyer to Dr. F. J. Schultz, subject, "NICOTINE AUGMENTATION PROJECT, parens, NAP, close parens," bearing Bates number 00050444 through 450.

Have you seen this document before?

A. I don't believe I have.

Q. But sometime during the preparation for your deposition here today you -- you came to learn that there was something at Lorillard, a research project

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known as the nicotine augmentation project?
A. During my preparation for this testimony, that's correct.
Q. But you didn't actually see the -- this document?
A. That is correct.
Q. Do you know who H. J. Minnemeyer is?
A. That's Harry Minnemeyer, who was in the research department at Lorillard.
Q. Was he still in the research department while you were the CEO?
A. I believe he was.
Q. And Dr. F. J. Schultz, do you know who that individual is?
A. That's Fred Schultz, who was the vice-president of research when I was at Lorillard -- when -- when I -- when I came back as CEO.
Q. And on the last page there are a number of individuals who are shown as receiving copies of this particular document.
A. Right.
Q. Do you recognize any of those individuals?
A. Yes.
Q. Would you identify for the record those who you recognize.

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A. C. L. Tucker, I believe, would be Charlie Tucker, who, as I previously stated, worked -- I worked with on chewing tobacco. A. B. Hudson, I believe, is Al Hudson, who was in the research department. I'm not sure if T. B. Moring is Tom Moring, who is now director of quality control, I'm not sure if that's the same person. I believe I recognize J. R. Reid, in the research department.

Q. Anyone else?

A. No.

Q. Turn, if you would, to the --

A. I --

It could be people who I have met over the years at Lorillard, but those are the only ones -- the only names I can think of right now.

Q. Turn, if you would, please, to the first page of the memorandum, and in -- in the introduction Mr. Minnemeyer writes, "Recommendations from health oriented agencies and pressure from competitive companies make it imperative that Lorillard develop a flavorful cigarette delivering lower tar while at the same time delivering a level of nicotine higher than could be obtained normally by conventional cigarette construction." Do you see that?

A. Yes.

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Q. At any time before you testified before the Waxman Committee, were you aware of a Lorillard project that was considered an imperative project to develop a cigarette that had a lower level of nicotine but a -- or a lower level of tar but a higher level of nicotine than -- than could be obtained normally by conventional cigarette construction?

A. As I testified prior to this, I was not aware of the -- this project until two days ago. Now, you know, I -- this --

The date on this was 1976. I had left the company in 1975.

Q. And he goes on in the -- in the next sentence to say, "This goal is almost an absolute necessity for brands delivering less than 8 milligrams of tar. If achieved, the technology may be applied to all classes of cigarettes to achieve lower tar delivery while maintaining or enhancing current nicotine levels."

A. I see that.

Q. He then says, "The attainment of this goal would be difficult under normal circumstances since the development of such products involve novel cigarette construction and the utilization of scientific

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technology not previously practiced within the Lorillard Research or Product Development Departments." Do you see that?

A. Yes.

Q. He then says, "To reach the objectives deemed necessary by Marketing and endorsed by higher management within the proposed time tables requires a highly concentrated effort of the highest priority by the Research Department." See that?

A. Yes.

Q. Now I understand you to say before you testified you weren't aware of the -- the nicotine augmentation project that's referenced in this memorandum, but were you aware by any name of a project at the research and development department that was going to utilize technology -- new technology, novel cigarette construction that hadn't been utilized before to find a cigarette that delivered lower tar and maintained or enhanced nicotine delivery in that cigarette?

MR. WACHTELL: Objected to as vague and ambiguous and lacks foundation.

A. No, I -- I was not aware of any such project.

One thing then, we're going back to my days as a brand manager on Kent Golden Lights, which was a product that we were considering introducing in

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1975. The -- all the concentration of -- or all the focus at the time was on getting the tar number as low as possible. That seemed to be the number that people were most concerned with, that seemed to be the focus of most of the health exploration in the -- in the middle 1970s. So the -- the tar number was -- was considered a fairly critical number at that -- at that point in time.

Q. What about the nicotine number, was there discussion about that that you recall?

A. We --

I don't think, again going -- going back to the marketing, you know, I'll repeat it again, I'm not a scientist, but no one really focussed on the nicotine number.

Q. Turn --

A. The -- the targets that we looked at in developing Kent Golden Lights were the tar numbers, not the nicotine numbers.

Q. Turn, if you would, please, to page two of the memorandum. The top of the page, the second paragraph, the author talks about the parameters which must be examined in order to produce a low tar cigarette capable of delivering a satisfying level of nicotine. Do you see that?

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A. Where are --

Where are you reading from?

Q. The second paragraph from the top of the page.

A. "Many of the parameters...?"

Q. Right. And then he says that those parameters are listed in the following section, and then there's a heading under Arabic number one, "Nicotine Addition." The author says, "One of the most obvious ways to deliver additional nicotine in a low tar cigarette is to add nicotine from an outside to that naturally present in cigarette tobaccos." Do you see that?

A. Yes.

Q. Are you aware --

Were you aware at any time before you testified of any research project at Lorillard that had looked at the possibility of actually adding nicotine from an outside source to cigarettes?

MR. WACHTELL: Object to the question as lacking foundation.

A. No, I wasn't.

And I mean, is this -- is this a project here that -- when they talk about nicotine -- nicotine addition, was this undertaken as a project or was this simply a statement of the various possibilities?

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Q. The author in the paragraph says "the parameters which must be examined." He's listing the parameters which must be examined. Do you see that in the pre -- in the introductory --

A. Yeah. But, you know, did this get to the point where they were actually trying to add nicotine or --

You know, I -- I don't know -- I don't know where it went from here.

Q. Do you know?

A. No, I don't.

Q. So one of the parameters is the actual addition of nicotine. You were unaware of -- of any research along those lines when you testified before Congress; correct?

MR. WACHTELL: Asked and answered.

A. That's correct.

Q. Turn to the next page, page three, under the heading "Nicotine Utilization" at the bottom of the page, --

A. Uh-huh.

Q. -- the author says, "If the company is successful in obtaining a supply or source of nicotine, the next immediate problem is to determine how and where to apply it to our product." See that?

A. Uh-huh.

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THE REPORTER: Your answer?

MR. FINZEN: You have to say "yes" or "no" so he can report it.

THE WITNESS: I'm -- I'm sorry. Will you repeat the question?

MR. FINZEN: Yes.

Q. I was --

I was simply asking whether you saw the sentence that begins under the heading "Nicotine Utilization" that "If the company is successful in obtaining a supply or source of nicotine, the next immediate problem is to determine how and where to apply it to our product." Do you see that?

A. Yes, I see that.

Q. Then he goes on in the next paragraph to say, "While nicotine could be applied to the whole blend or incorporated in some way in the filter, it appears most practical to apply it in some way to the reconstituted leaf." See that?

A. Yes.

Q. Do you know what the reconstituted leaf is in a tobacco product?

A. Yes.

Q. What is that?

Q. That's the added tobacco used to, I believe,

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increase the volume and lower the overall cost of the product.

Q. And is that a manufactured project -- or product, reconstituted leaf?

A. It is, I believe.

Q. And it is --

Then the reconstituted leaf is added along with tobacco --

A. It's put into the overall blend.

Q. Were you aware at any time before you testified before the Waxman Committee of any research project at Lorillard that looked at the addition of nicotine to reconstituted leaf?

A. Well I was made aware in my preparation of -- for the Waxman hearings that nicotine and a number of other components were removed from the reconstituted leaf during the process and then reintroduced into the process later on down the line.

Q. Okay. And as part of that, were you aware that nicotine was in some way applied to the reconstituted leaf at some point in the manufacture of it?

MR. WACHTELL: Object to the question as vague and ambiguous and --

A. The characterization was not that nicotine itself was -- was reintroduced, but that a number

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of -- of elements or compounds that were -- came out in the -- I guess in the -- in the liquid that was dried out of the reconstituted leaf were reintroduced.

Q. And in addition to that part of the process -- Which you understood to be the normal reconstituted leaf manufacturing process or part of it?

A. That's what I understood it to be.

Q. In addition to that, were you aware of any projects that were researched at Lorillard for addition of nicotine beyond that to the reconstituted leaf at the time that you testified?

A. No, I was not aware.

MR. WACHTELL: Lacks foundation. Sorry, little bit slow at the switch, but certainly lacks foundation.

Q. Turn, if you would, to the next page, please, page four at the top. He lists as Arabic item number two the heading "Chemical Treatment." Says -- the author says, "An alternate approach is to treat the tobacco, which has its nicotine naturally tied up in the form of nicotine salts, with a stronger base than nicotine, such as ammonia. Ammonia would then displace nicotine from its salts giving ammonia salts

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and free nicotine -- ammonium salts and free nicotine. Free nicotine in smoke would have a much greater physiological effect than nicotine salts."

Do you see that?

A. Yes.

Q. Before you testified at the Waxman hearing, were you aware of any research projects that had been undertaken by Lorillard for treating tobacco with stronger bases than nicotine, such as ammonia?

MR. WACHTELL: Lacks foundation, object to the form of the question.

A. I don't believe I was aware of any.

Q. Were you aware generally of the notion of free and bound nicotine in cigarette smoke while you were CEO of the company?

MR. WACHTELL: Objected to as vague and ambiguous.

A. I was made aware of it during the Waxman hearings. There was a discussion about it.

Q. Prior to actually being at the hearing, were you aware of the concept of there being something called free nicotine in cigarette smoke?

A. I don't believe I was aware of it.

Q. Before the hearing were you aware that any component of nicotine in cigarette smoke was more

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physiologically effective than other nicotine components?

MR. WACHTELL: Object to the form of the question as vague and ambiguous and lacking foundation.

A. I -- I don't believe so.

Q. The third item on page four of this memorandum under the heading "Air Dilution," says, in the first paragraph, "It has been reported in the literature, and verified by experiments here that air dilution of cigarette smoke results in up to 40 percent higher nicotine delivery than might be expected by conventional construction. The reason for the effect is not understood. This could well be a very rewarding and inexpensive partial solution to the whole problem. Surely, new concepts of filter construction involving air dilution should be vigorously pursued to heighten and maximize the effect." Do you see that?

A. Yes.

Q. At any point before you testified before the Waxman Committee, were you aware that air dilution of cigarette smoke resulted in higher nicotine delivery than cigarettes that were not air diluted?

MR. WACHTELL: Object to the form of the

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question.

A. I do not believe I was aware of that.

Q. Were you aware at any time that Lorillard had pursued research into various air-dilution techniques for the purpose of increasing nicotine delivery above that which would be obtained from conventional cigarette construction?

MR. WACHTELL: Object to the question as lacking foundation.

A. No, I do not believe I was aware of that.

Q. Would you turn the page to page five. There is a heading, Arabic four, "Decreasing the Acidity of Smoke," and in the first paragraph it says, "It is known that the higher the pH of the smoke -- the higher the pH of the smoke is, parens, i.e., the more basic, close parens, the more nicotine exists in the free form. Free nicotine has a greater physiological effect, and it is this effect we want to achieve without sacrificing taste." Do you see that?

A. Yes.

Q. The second paragraph, in the second sentence, says, "An optimum smoke pH level must be determined, one which will not effect taste significantly. Effort will then be made to target our products to an optimum pH level while maintaining other desirable

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smoking qualities. A thought here is that products may be directed toward optimum pH through cigarette construction rather than any significant blend changes."

And the next paragraph says, "The major change here from present practice is that smoke pH will be targeted as a specification as well as taste." Do you see that?

A. Uh-huh.

Q. At any time before you testified at the Waxman Committee, were you aware that Lorillard targeted smoke pH as a specification in any brand of its cigarettes?

MR. WACHTELL: Object to the question as lacking foundation and misleading.

A. Will you repeat the question?

Q. Yes.

At any time before you testified at the Waxman hearing, were you aware that Lorillard targeted pH, smoke pH as a specification -- as a specification in any brand of its cigarettes?

MR. WACHTELL: Same objections.

A. I believe I was.

Q. When did you first become aware of that?

A. I believe when we -- that --

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That was one of the criteria, if I remember correctly, in some of the product development papers I may have seen when I was a brand manager.

Q. And did you understand that the pH level of the -- of the smoke determined whether or not there was more free nicotine or less free nicotine in the cigarette smoke?

A. I don't believe I understood that.

Q. Did you understand that there was any connection, at the time you were aware of pH level, between pH level and the delivery of nicotine in the cigarette?

A. I don't believe I was. You know, I know the pH level was one of the things that we looked at, but I'm not sure what the exact context of it was.

Q. Do you recall what the pH specifications were for any brand of cigarette while you were in marketing at Lorillard?

A. No.

Q. What is the basis of your knowledge that you had with regard to pH while you were at Lorillard? How did you obtain that knowledge?

A. I --

MR. WACHTELL: What are you talking about, when he was long, long back in the early '70s before

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1201? He's been at Lorillard twice. You haven't specified.

MR. FINZEN: He specified that he saw it when he was brand manager.

MR. WACHTELL: Yeah. I just want to be sure that's the context of your question, that that's what you're asking him.

MR. FINZEN: That is the context of my question.

MR. WACHTELL: Fine. No problem.

THE WITNESS: What is -- what's the question before me?

Q. What was the basis of your knowledge that you had with regard to pH while you were at Lorillard?

A. I don't even remember.

Q. Then on page five of Exhibit 1201, item number five says "Reduction of Nicotine Pyrolysis." See that?

A. Yes.

Q. Were you, before you testified at the Waxman Committee, aware generally of the transfer rate of nicotine from tobacco to smoke during pyrolysis?

A. No.

Q. Were you aware that only about 13 percent of the nicotine that was present in the tobacco of a

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non-filtered cigarette was delivered into the mainstream smoke?

A. I do not believe I was aware of that.

Q. Were you aware of any research that was done at any time at Lorillard to try to increase the nicotine transfer effectiveness of its cigarette products?

MR. WACHTELL: Object to the question as vague and ambiguous and lacking foundation.

A. I do not believe I was aware of that.

Q. At the top of page six, the next page, item number six is entitled "Filters Selective for Nicotine Passage." Do you see that?

A. Yes.

Q. At any time before you testified before the Waxman Committee, were you aware that there were filters that were selective for nicotine passage on any Lorillard cigarettes?

MR. WACHTELL: Object to the question. I don't think you asked the question you meant to ask. I don't think that question is comprehensible, but --

Q. Can you --

Can you answer the question?

A. I can answer it in a broader sense. I -- I wasn't aware that there were any filters that were selective for nicotine passage. I was aware that

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there were filtration systems that were used for different -- for different purposes, but I wasn't aware of any specifically for nicotine passage.

Q. Were you aware that there were filters on Lorillard cigarettes that allowed a greater amount of nicotine to pass through than other filters?

MR. WACHTELL: Object to the question, lacking foundation, vague and ambiguous, and misleading.

A. Not -- not specifically.

Q. Were you aware that there had been research conducted over the years toward the design of a filter that would be selective for allowing nicotine to flow through the filter?

MR. WACHTELL: Object to the question as vague and ambiguous and misleading. And lacking foundation, excuse me.

A. I -- I was not aware of that. I was aware that there was a lot of research done on filters, but I wasn't -- I can't characterize what the specific research was.

Q. Item number 10 on page six is entitled "Physiological Effect of Nicotine."

A. Uh-huh.

Q. And the author writes, "A study of the existing

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literature on the physiological effect of nicotine may provide some insight as to what is minimum -- the minimum amount of nicotine delivery necessary per cigarette to give satisfaction to the largest number of people." See that?

A. Yes.

Q. Had you ever seen any Lorillard research on the physiological effect of nicotine?

MR. WACHTELL: Object to the question. Object to the question as lacking foundation.

A. Not that I can remember.

Q. Were you aware, prior to your testimony at the Waxman hearing, whether Lorillard had conducted any literature review or -- well, literature review with regard to the physiological effect of nicotine?

A. Not that I can remember.

Q. Were you aware whether Lorillard had done any studies with regard to the physiological effect of nicotine?

MR. WACHTELL: Your question is ambiguous when you say "whether." Are you asking did he know that there were studies, or does he know one way or the other?

MR. FINZEN: Did he know one way or the other.

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A. Not that I can remember.
Q. Did you inquire of Dr. Spears or anyone in the research department whether such studies had been undertaken?
MR. WACHTELL: Can we -- can we have such studies --
Can the witness hear the question, what you were asking him, please?
MR. FINZEN: Sure.
Q. Were --
Had you inquired of Dr. Spears or anyone else in the research department whether studies on the physiological effects of nicotine had been undertaken by Lorillard?
A. I don't remember whether I made that inquiry or not.
Q. Do you recall in your testimony, that you stated in your -- in your specific oral testimony on page 23 of the transcript, in the third paragraph, "In your March 31 letter, we are asked to address any studies of the physiological or psycological effects of nicotine and related compounds which have been undertaken by Lorillard, I can respond succinctly: Lorillard has not undertaken any such research." Do you see that?

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A. Then obviously I -- that inquiry had been made.
Q. And when you made that inquiry, do you know who you made inquiry of?
A. I'm not sure if the inquiry would have -- would have been made directly to Dr. Spears or through -- through my lawyers to Dr. Spears, whether it's directly or indirectly.
Q. And in making that inquiry, no one told you about item number 10 in Exhibit 1201 of the memo on the nicotine augmentation project that we just looked at regarding the physiological effects of nicotine?
MR. WACHTELL: Object to the form of the question as misleading.
A. Nobody -- nobody had told me of any such studies.
Q. If you turn to the last page of the memorandum, page number seven at the top, item number 11 is "Maintain a Survey of Nicotine/Tar Ratios in Relation to Sales Performance." The author says, "All the preceding sections have been devoted to the concept of reducing tar numbers while increasing the relative ratio of nicotine to tar." See that?
A. Uh-huh.
Q. Then says --
He then says, "Participants in this research

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should be aware of the historical and developing trend of these ratios, and how they relate to sales performance to ensure that the team is not chasing, quote, pie in the sky, close quote, period." See that?

A. Uh-huh.

Q. While you were at Lorillard as the CEO, were you aware that anyone kept track of sales as they related to the nicotine/tar ratio of cigarettes that Lorillard was selling?

MR. WACHTELL: Is your --

Is your question while he was CEO, did he become aware that they were doing it while he was CEO, or did he become aware that they had or had not done it historically?

MR. FINZEN: That they were doing it while he was CEO.

A. Well I knew we were tracking sales. I don't know if --

I didn't know if we were tracking them specifically against the specific tar and nicotine numbers. We were tracking sales by brands, which -- each of which had tar and nicotine numbers, and we were looking at all kinds of sales trends, but I never saw any that related to -- specifically to tar

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and nicotine numbers or ratios.

Q. Did you see at any period of time prior to you being CEO when sales of cigarettes were tracked against the ratio of nicotine to tar?

A. Again, the same answer would apply.

Q. Mr. Tisch, I'd like to show you next what's been marked as Plaintiffs' Exhibit 1202 previously in this litigation. It is a memorandum on Lorillard letterhead dated April 28, 1976 from R. E. Smith to Mr. J. R. Ave and Dr. A. W. Spears, bears Bates number 01254896 through 4898.

Have you seen this document before?

A. I don't believe I have.

Q. The reference of the memorandum is the PDC meeting of 4/28/76. The actual date of the memo in the upper right is April 29, 1976.

MR. WACHTELL: I don't want to interrupt you, but I'm having a lot of trouble with the screen.

THE REPORTER: Let's go off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. The reference line of the memorandum says, "PDC Meeting: 4/28/76." Do you see that?

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A. Yes.
Q. The actual date of the memorandum is April 29, 1976; correct?
A. That's --
I see that.
Q. Do you know who Mr. J. R. Ave is?
A. Yes.
Q. And who is he?
A. He at the time, I believe, was the vice-president or senior executive vice-president of marketing -- I'm sorry, of advertising brand management.
Q. And Mr. R. E. Smith?
A. That would be Dick Smith, who was, I believe, a group brand manager at that time.
Q. And did Mr. -- Mr. Ave ultimately become the CEO of the company?
A. Yes.
Q. Do you know when that occurred?
A. I believe it was 1986 or 1987.
Q. Is he the individual who you replaced as CEO?
A. Yes.
Q. In this memorandum I would ask you to turn, please --
Before I do that, let me ask you one question.

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The reference to PDC, do you know what that refers to?

A. That would be product development committee.

Q. And what was the product development committee at Lorillard?

MR. WACHTELL: When?

Q. Well, at any time that you were there. Did it change between the first time you were at the company and the second time?

A. Ah --

Q. And by "change," I mean in terms of what its focus or purpose was.

A. Well the product development committee, when I was -- I believe it was established while I was at Lorillard the first time between '71 and '75, and it was established as a communications device between the various disciplines of the company. It --

Under my -- my guidance, I believe it attained less and less importance as a communications vehicle.

Q. When you say the communications were between various disciplines of the company, which disciplines?

A. Marketing, sales, research, manufacturing primarily.

Q. On the second page of this memorandum, the

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author writes, under the "New Brands" heading at the -- near the -- about a quarter of the way down the page --

See that?

A. Uh-huh.

Q. -- Arabic number one. "It was agreed that judgement and recent publicity give an enriched nicotine product the highest priority of all new brand projects. The project has been divided into three parts: a.) How to get the nicotine, parens, quantities, prices, throw-away costs, et cetera, close parens, b.) How to use the nicotine, parens, on both 5 mg and 2 mg tar products, close parens, and c.) What are the corporate implications of nicotine addition." Do you see that?

A. Yes.

Q. Do you know what the corporate implications of nicotine addition are that are referenced by the author in this memo?

A. No.

MR. WACHTELL: When you say "are," you mean were.

MR. FINZEN: Were.

A. No, I do not.

Q. Was there discussion while you were at Lorillard

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in the 1970s with regard to FDA regulation of cigarettes in any context?

A. Not that I can remember.

Q. As having been CEO of the company, as you sit here today, do you have any idea what corporate implications there would be concerning a project that was looking at adding nicotine to cigarettes?

MR. WACHTELL: Speculative, object to the form of the question.

A. I would have no idea.

Q. At the time that you testified before the Waxman Committee, were you aware that at any point in the history of the company an enriched nicotine rod had been considered by the product development committee as a highest priority project of that committee?

A. No, I was not.

Q. Let me show you now what's been previously marked in this litigation as Plaintiffs' Exhibit 1203. This is a memorandum from the Lorillard Research Center in Greensboro dated June 8, 1976, submitted by T. M. Larson and J. P. Morgan, bearing Bates number 00781406 through 417.

Have you seen this document before?

A. I do not believe I have.

Q. Title of this memo is --

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A. One second. Let me just --
Q. Surely.
A. Okay. Just wanted to make sure I had all the pages.
Q. Title of this memorandum is "APPLICATION OF FREE NICOTINE TO CIGARETTE TOBACCO AND DELIVERY OF THAT NICOTINE IN THE CIGARETTE SMOKE." Do you see that?
A. Yes.
Q. Do you know who T. M. Larson is?
A. I do not.
Q. J. P. Morgan?
A. I do not.
Q. Do you recognize --
A. The only --
The only J. P. Morgan I know, or the only J. Morgan I know is at Philip Morris.
Q. Do you know any of the people who are copied that appear at the bottom of the first page of the memorandum?
A. We've talked about Schultz, Minnemeyer and Tucker. I do not know Ms. Ireland. And I presume that the library is the research library in -- in Greensboro.
Q. Did Lorillard have a practice of all research memoranda being maintained in the library in

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Greensboro?

MR. WACHTELL: When? When did it have a practice?

MR. FINZEN: At any time.

MR. WACHTELL: If you know, you may certainly answer.

A. I don't know.

Q. So at any time while you were with the company in the 1970s or the 1980s or the 1990s, you have no knowledge as to whether there was a practice with regard to the depositing of research memos into the library?

A. I have no idea.

Q. Who had access to the library in Greensboro at the period of times when you were with the company, any of the times?

A. I -- I really don't know.

Q. As a person in marketing, did you have access to the library in the 1970s if you wanted access?

A. You know, I -- I don't know.

Q. As the CEO of the company, did you have access to the research library if -- if you wanted access?

A. I'm -- I'm sure I could have.

Q. If you turn to the first page after the title page, "Part I." at the top of the page says

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"Application of Free Nicotine to Cigarettes."

MR. WACHTELL: "Cigarette Tobacco."

Q. See that? "Cigarette Tobacco."

A. Yes, I see that.

Q. And they talk in the first paragraph about free nicotine or nicotine tartrate being sprayed on cut cigarette tobaccos. See that?

A. Uh-huh.

Q. And then in the second paragraph they talk about nicotine being applied to the same Kent Golden Light blend.

MR. WACHTELL: Is there a question?

MR. FINZEN: There will be.

Q. Do you see that?

A. Yes.

Q. And then in the third paragraph they talk about nicotine being sprayed on to flue -- flue-cured tobacco and puffed tobacco.

A. Yes.

Q. Do you know what flue-cured tobacco is?

A. Yes.

Q. What is it?

A. I said it too fast. I believe it's -- it's burley tobacco, tobacco grown primarily in Kentucky, Tennessee, Indiana, some Ohio, couple of other

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states.
Q. And puffed tobacco, do you know what that is?
A. Yes.
Q. What is that?
A. Puffed tobacco is tobacco which has been increased in volume to reduce the amount of tobacco required to fill a cigarette cylinder.
Q. Turn, if you would, to page three, then, of the -- of the memorandum.
A. Page three of the memorandum?
Q. Three at the top, yes.
The first paragraph under "Puff on Puff Analyses," --
A. Uh-huh.
Q. -- the author says, "The puff by puff analyses, parens, profiles, close parens, show that added nicotine is delivered in a manner similar to natural nicotine in tobacco; that is, the nicotine delivery increases with each puff." See that?
A. Yes.
Q. When you were an employee of Lorillard in -- in either the '70s, the '80s or the '90s, were you aware that the normal nicotine delivery of a cigarette is that it increases with each puff?
MR. WACHTELL: I think that question is

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vague and ambiguous, incomprehensible and compound. And it --

A. I -- I may have been, in a larger context.

Q. What would the larger context have been?

A. That the concentration of components, I believe, increased as you got lower -- as the cigarette got smoked more.

MR. WACHTELL: See, that's the problem with an incomprehensible question, Bruce: you get an incomprehensible answer.

Q. When you say "as you got lower," you mean as the length of the cigarette got reduced?

A. Yes.

Q. And as the cigarette became shorter from smoking, the concentration of certain components increased?

A. Yes. And my understanding, which is very rudimentary, was that there's really less -- that the tobacco itself also helped to filter, so that as you got less tobacco to draw the smoke through, more -- more smoke came in -- in through the filter.

Q. And that would, based upon your understanding, mean that the amount of nicotine would then be increased on puffs later in the cigarette as it got shorter than earlier in the cigarette?

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A. That means the amount of everything.
Q. Not just nicotine.
A. You know, we have --
I mean again, you know, this is my understanding of it.
Q. Under the "Comments" section on page three with regard to this particular research, the author writes at the bottom of the page -- I'm sorry, at the bottom of the "Comments" paragraph, the last sentence -- last two sentences, "This indicated that a small amount of free nicotine added to the tobacco at a level low enough not to significantly change the T&N numbers did provide the impact of a regular higher nicotine cigarette. This may be what R. J. Reynolds is doing with Vantage." See that?
A. Yes.
Q. At any time before you testified at the Waxman hearing, were you aware of research done by Lorillard that indicated that if a small amount of free nicotine was added to tobacco in a cigarette, it could be added at levels low enough so that it would not change the overall tar and nicotine numbers of the cigarette?
MR. WACHTELL: Object to the form of the question as lacking foundation.

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A. No, I was not aware of that.
Q. At any time before you testified before the Waxman Committee, were you aware of research that was conducted at Lorillard showing that free nicotine could be added to a cigarette in numbers that were low enough so that the tar and nicotine numbers of the cigarette did not change and that that cigarette would then provide the nicotine impact of a regular higher nicotine cigarette?
MR. WACHTELL: Object to the question, vague and ambiguous, compound, and lacking foundation.
A. Isn't that the question you just asked me before?
Q. No. I added whether you were aware that there was research done about the addition of nicotine in quantities small enough that it didn't change the tar and nicotine numbers of the cigarette, but delivered the impact -- nicotine impact of a regular higher nicotine cigarette.
MR. WACHTELL: Same objections.
A. No, I was not aware of that.
Q. Before you testified and said that the nicotine levels follow the tar levels in your testimony before the committee, had anyone reviewed with you any of

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the research projects that we've looked at in the preceding exhibits showing that the nicotine levels in fact could be made to be different from and higher than the tar levels?

MR. WACHTELL: Object to the form of the question as misleading.

A. I don't believe anyone had. I -- I've not seen any of these studies or heard reference to any of them.

Q. We've seen Dr. Spears' name on a number of these exhibits; correct?

A. On some of them I believe.

Q. Did Dr. Spears at any time before you testified talk to you at all about research done at Lorillard to increase the nicotine-to-tar ratio of low tar cigarettes?

A. I do not believe he did.

Q. At any time did he tell you that a small amount of nicotine could be added to a cigarette that would not change the tar and nicotine numbers measured by the FTC that would give a greater nicotine impact of a higher nicotine cigarette?

MR. WACHTELL: Object to the question as lacking foundation. You can answer.

A. I do not believe he did.

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Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1204. It is a memorandum on Lorillard letterhead dated June 16, 1976, from H. J. Minnemeyer to Dr. A. W. Spears, subject, "Progress Report on Nicotine Augmentation Project," bears Bates number 00044525 through 528.

Have you seen this document before?

A. I don't believe I have.

Q. And you've identified Dr. Minnemeyer -- or Mr. Minnemeyer before; correct?

A. I have.

Q. On the second page of the memorandum with page number two at the top, in the second full paragraph the author writes, "Participants in this work now feel that a satisfactory low tar smoking article might be achieved by the addition of much less nicotine than was previously thought necessary. By spraying the blend with a small amount of nicotine it might be possible to get the impact of a higher T&N cigarette. This might be achieved without actually changing the tar -- T&N figures one would get from untreated tobacco." See that?

A. Uh-huh.

Q. This is dated June 16, 1976 and addressed to Dr. Spears; correct?

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A. That's correct.
Q. But if I understand your testimony, Dr. Spears never shared this information with you before you testified before the Waxman Committee?
A. I do not believe so.
Q. At any time before you testified, were you aware that there were people inside of Lorillard in the research area who believed that nicotine addition was already being undertaken by some of your competitors?
A. I was not aware of that.
Q. The next paragraph says, "The recent conception that a small amount of supplemented nicotine might lead to a satisfactory low tar cigarette seems to be supported by another study completed recently. Whether correct or incorrect, it had been the impression of those personnel working directly on this project that competitive companies were adding nicotine to their products."

MR. WACHTELL: I'm sorry, where -- where are you reading from?

MR. FINZEN: First -- the second --

The first two sentences of the third full paragraph.
Q. Do you see those, sir?
A. Yes.

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Q. Again, if I understand your testimony to the -- most recent question, no one advised you that there was a belief that competitors were already adding nicotine to their products before you testified at the Waxman Committee; is that correct?

MR. WACHTELL: I think he answered that as your question self-indicated. He did answer that.

Q. Is that --

Is that correct?

A. That there was a belief in 1976 --

MR. WACHTELL: On the part of some person in research.

MR. FINZEN: Yes.

A. Nobody advised me of that.

Q. And the last sentence of that same paragraph says, "However, if small amounts of nicotine were added to any of these tobacco blends, this would not show up in these particular data," referring to the nicotine/tar data.

A. I -- I have no idea. I haven't read the whole memo, and, you know, I'm -- I'm just -- I don't know what's in between what you've asked -- you've asked me about.

Q. All right. Let's --

Let's pick up, then, the sentence that says "If

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any...." Do you see that? "If any significant...?"
A. "If any significance amount," yes.
Q. -- "of nicotine were being added, it would be reasonable to expect a change in the nicotine/tar ratio for those brands when data -- when data accumulated over a long time span were examined. Accordingly, these ratios were calculated from FTC and other data for 19 leading brands of cigarettes, many over the period 1956-1976. No instances could be found where the data could support the contention advanced above. However, if small amounts of nicotine were added to any of these tobacco blends, this would not show up in these particular data." See that?
A. Yes.
Q. Again, at any time before you testified, were you made aware that -- by Dr. Spears or anyone in the research department -- that small amounts of nicotine could be added to cigarettes without affecting the tar and nicotine levels as reported by the FTC?
MR. WACHTELL: Object to the form of the question as lacking foundation and vague and ambiguous. You can answer.
A. At --
At no point did anyone advise me that in 1976

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people believed that small amounts of nicotine could be added to tobacco blends without changing the particular data.

Q. Did anyone advise you that, any time between 1976 and the time you testified, people believed that small amounts of nicotine could be added to tobacco blends without changing tar-and-nicotine ratios?

MR. WACHTELL: Same objection.

A. No.

Q. Then on page three, the last paragraph, first sentence says, "Efforts to determine how the physiological effect of nicotine might be heightened, or to determine the optimum or minimum amount of nicotine necessary to provide satisfaction has largely been centered on background reading." Do you see that?

A. Yes.

Q. Before your testimony at the Waxman hearing, did Dr. Spears share with you any of the results of any study that was conducted regarding the physiological effect of nicotine?

MR. WACHTELL: Object to the question as misleading and lacking foundation and vague and ambiguous.

A. Will you repeat the question, please?

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Q. Yes.

At any time before you testified at the Waxman hearing, did Dr. Spears share with you any of the results of any study that was conducted by Lorillard regarding the physiology -- physiological effect of nicotine?

MR. WACHTELL: Same objections.

A. Not that I can remember.

Q. Or how that physiological effect of nicotine might be heightened?

MR. WACHTELL: Same objections.

A. I don't believe so.

Q. Or a study to determine the optimum or minimum amount of nicotine necessary to provide satisfaction?

MR. WACHTELL: Same objections.

A. I do not believe so.

Q. And when you testified that Lorillard had not undertaken studies of the physiological effects of nicotine, did Dr. Spears either after that or at the hearing or any time after that say to you that I think there has been some study that's been done in the past?

A. I do not believe he did.

Q. If there had --

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If he had knowledge of the fact that studies of the physiological effect of nicotine had been undertaken by Lorillard, would you have expected him to have brought that to your attention?

MR. WACHTELL: Object to the question as lacking foundation and misleading and calls for speculation.

A. Could you repeat the question, please?

Q. Yes.

If Dr. Spears had knowledge that studies on the physiological effect of nicotine had been undertaken by Lorillard, would you have expected him to have brought that to your attention?

MR. WACHTELL: Same objections.

A. If -- if those fit within the purview of what was being requested, I would have expected that he would have brought them to my attention.

Q. Have you ever heard of a project called B412, Nicotine Manipulation, Migration & Reaction Mechanism?

A. Not that I can recall.

Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1205.

A. I would appreciate it if you could push them a little bit further.

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Q. This is a memorandum from the Lorillard Research Center in Greensboro titled "pH OF SMOKE, A REVIEW," submitted by Leighton Chen and bearing date number -- a date of July 12, 1976, and Bates number 00781909 through 921.

Have you ever seen this document before?

A. I've got more pages than you've indicated.

Q. Yours goes beyond 921?

A. I go up to 926.

Q. Let me see yours once.

You are correct, and the record should reflect that the last Bates number is 926.

Have you seen this document before?

A. I do not believe so.

Q. Do you know who Leighton Chen is?

A. I do not.

Q. Are there any people shown on the copy at the bottom of the first page that we haven't previously identified that you recognize?

A. No.

Q. Turn to page 12, if you would, please, of this memorandum. At the top of the page, first paragraph says that "If the desired goal is defined to be increased nicotine yield in the delivered smoke, there appear to be only two alternatives: either

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increase the absolute yield of delivered nicotine, or increase the pH, which increases the, quote, apparent, close quote, nicotine content without changing the absolute amount." See that?

A. Uh-huh.

Q. At any time before you testified, did you understand that there was a difference between nicotine delivery of an absolute or an apparent nicotine delivery?

MR. WACHTELL: Object to the form of the question as vague and ambiguous and without foundation.

A. Will you repeat the question?

Q. Yes.

Before you testified at the committee, were you aware of the difference between actual nicotine delivery and apparent nicotine delivery in a cigarette?

MR. WACHTELL: Object to the question as lacking --

A. I do not believe I was.

Q. Had you ever heard anyone at Lorillard, before you testified, refer to the apparent nicotine content of a cigarette?

A. I do not believe so.

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Q. The author goes on to say, "Spears summarized the factors which determine the nicotine content of the delivered smoke: the static burn rate or amount of tobacco consumed during puffing; the pressure drop of the tobacco column; the porosity of the wrapper and/or ventilation at the filter; the pressure drop of the filter; the filter material; the surface area of the filter material; the affinity of the filter material for nicotine; plant genetics and commercial processing. The viable means of increasing the pH appear to be blend alteration, parens, e.g. Wisconsin tobaccos have higher pH's, close parens, selective filtration techniques and/or the use of basic chemical additives." See that?

MR. WACHTELL: I would just note when you say "Spears," it's reference to a paper by Spears in the bibliography.

MR. FINZEN: Yes.

A. I see that.

Q. Do you see that part?

Were you aware of any of those parameters that is being reported upon there as the factors which determine the nicotine content of delivered smoke in a cigarette before you testified at the Waxman Committee?

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A. No, I was not.

MR. WACHTELL: Other than as he's previously testified.

THE WITNESS: Right.

MR. FINZEN: Yes.

A. I was --

I was aware that cigarette construction and all these other -- a lot of these other items had something to do with -- with smoke delivery.

Q. He then says in the second paragraph, "Moring has studied the effect of additives on reconstituted leaf in order to increase the observed smoke pH. Lorillard's RL have measured significantly lower in pH than Marlboro RL, which has been judged to have the appearance and smoking quality most like that of natural tobacco. It is likely that Philip Morris adds either diammonium phosphate or ammonium hydroxide to their RL. Among the additives considered were diammonium phosphate, Cyanoquanidine, guanidine HCl, guanidine carbonate, ammonium hydroxide, asparagine, dimethyl-pipperdine, urea, nicotine, and nicotine citrate." See that?

A. Yes.

Q. At any time before you testified, were you aware that Lorillard had undertaken any research with

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regard to the addition of base materials to the RL of any Lorillard cigarette product?

A. No, I was not.

Q. About two or three sentences below that, below where I was just reading, it says, "However, it is anticipated that the new RL process which product development is working on will utilize diammonium phosphate additives to increase the pH of RL."

MR. WACHTELL: I don't think you can make sense out of that sentence without reading the preceding sentence in view of the fact that that sentence starts "however."

Q. Do you see that sentence?

A. I see that sentence.

Q. At any time before you testified at the Waxman hearing, were you made aware whether diammonium phosphate was added to the RL of any Lorillard cigarette?

A. I was not aware of it.

Q. Who --

A. Or not to my knowledge.

Q. Were you aware that the RL process for Lorillard cigarettes was changed at any time between July of 1976 and the date that you testified at the Waxman hearing with regard to the additives of any base

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materials to the RL sheet?

MR. WACHTELL: Object to the form of the question as lacking foundation.

A. Well I was aware that there was a change in the RL process.

Q. And what change were you made aware of?

A. I believe that sometime between 1975 and 1989, the -- we changed -- we stopped manufacturing RL and someone else began manufacturing it for us.

Q. Now the change in -- in the method and location of the manufacture of the RL itself?

MR. WACHTELL: Object to the form of the question, lacking foundation.

A. Certainly the location. I don't know anything about the method.

Q. And in terms of additives or changes in the formula for the RL, are you aware at any time between the date of this memorandum, July of '76, and the date that you testified, that there was a change in the formula of the RL where any base chemical additives were put into the RL?

A. No, but I'm -- I'm sure I can infer that there were changes in the formula, but I don't know what the significance of those changes were.

Q. Okay.

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MR. FINZEN: Want to take a lunch break?

MR. MONICA: Yeah, that's good. What, about an hour?

MR. FINZEN: That's fine.

THE REPORTER: Off the record, please.

(Luncheon recess taken at 12:38 o'clock p.m.)

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AFTERNOON SESSION

(Deposition reconvened at 1:48 o'clock p.m.)

BY MR. FINZEN:

Q. Good afternoon.

A. Good afternoon.

Q. Did you review any records during the lunch break of any kind?

A. No.

MR. FINZEN: Let me have you mark this next, please.

(Plaintiffs' Exhibit 1268 was marked for identification.)

MR. FINZEN: Can I have that back for a second?

You know, I just -- I did it to you again. It's been previously marked. Can you --

MR. WACHTELL: What's the previous number?

MR. FINZEN: 1213.

(Exhibit 1268 withdrawn from the record.)

MR. FINZEN: We're going to have to go off the record a minute.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

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Q. Mr. Tisch, I'm showing you now what's been previously marked as Plaintiffs' Exhibit 1213 in this litigation. It's a memorandum on Lorillard letterhead dated January 28, 1981 from M. S. Ireland to Dr. H. J. Minnemeyer, subject, "Proposal to continue project B412 - Nicotine Manipulation, Migration & Reaction Mechanisms," bearing Bates numbers 00052845 through 846.

MR. MONICA: Bruce, I'm sorry, I didn't see on Mr. Tisch's copy the second number stamp page. I mean there's a second page there, but --

Maybe I missed the number stamp.

MR. FINZEN: It's right --

MR. MONICA: Is it?

MR. FINZEN: Yeah.

MR. MONICA: I'm sorry. All right, go ahead.

Q. Have you seen this document before?

A. No, I have not, I don't believe.

Q. At any time before you testified in front of the Waxman Committee in 1994, were you aware of a project at Lorillard by -- by the name of B412, Nicotine Manipulation, Migration & Reaction Mechanisms?

A. I do not believe I was.

Q. This memorandum in the first sentence says,

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"Recent findings have indicated that certain additives, when added to the tobacco, can accelerate the rate of migration of nicotine." See that?

A. Yes.

Q. Were you aware, before testifying at the Waxman hearing, of any research that had been done by Lorillard regarding additives to cigarettes for the purpose of affecting migration of nicotine?

MR. WACHTELL: Object to the form of the question as lacking foundation and vague and ambiguous.

A. I -- I was not aware, no.

Q. The last sentence of the first paragraph says, "This has shown a slight increase in the nicotine delivery to the mainstream smoke."

A. May I read the sentence -- middle sentence, too, please?

Q. Surely.

A. Okay.

Q. Have you --

Have you read that?

A. Yes.

Q. Were you aware at any time before you testified of work that had been done by Lorillard with regard to the addition of malic acid to cigarette paper in

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any of its research projects?
A. No, I was not aware of it.
Q. Do you know whether there was continued work that was performed on project B412 after January of 1981?
A. I --
This is the first I'd heard of project B412, so I -- I would not know of that.
Q. Second paragraph says, "Continued work on this project will seek to optimize both tobacco additive and paper additive for maximum migration and increased delivery of nicotine to the mainstream smoke with rapid equilibration of the product. In addition, it would be desirable to control smoke pH so that a satisfactory taste and impact can be obtained." See that?
A. Yes.
Q. Whether it was by title of project B412 or otherwise, were you aware before you testified at the Waxman Committee of any research that was done at Lorillard to optimize both tobacco additive and paper additives for migration of nicotine?
MR. WACHTELL: Hold on one moment.
A. Will you repeat the question, please?
Q. Yes.

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Whether it was by the title of project B412 or any other name, were you aware, prior to your testimony at the Waxman subcommittee, of any research project at Lorillard that sought to optimize both tobacco additives and paper additives to maximize migration of nicotine to mainstream smoke?

A. I was not aware of any such project.

Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1215. This is a Lorillard Research Center, Greensboro, memorandum titled "Six-Fold Increase In Percent Free Nicotine Using Phenyl -- Phenethylamine As A Filter Additive," dated December 6, 1983 by J. M. Johnson, bearing Bates numbers 87259245 through 249.

Have you seen this document before?

A. I do --

I do not believe so.

Q. Do you know, on --

If you turn to the second page, there are a number of people listed as receiving copies of this memorandum. Are there any there that you have not previously identified that you recognize as someone you know?

A. Yes, V. Norman.

Q. And who is V. Norman?

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A. V. Norman is Vella Norman, who worked in the research -- research department.

Q. Anyone else?

A. No.

Q. This memorandum in the first paragraph says, "The object of this experiment was to increase smoke pH and therefore increase free nicotine in smoke by adding an aryl alkyl amine to the filter. A patent on cigarette filters which contain an aryl alkyl amine, of the form shown in Figure 1A, supported on charcoal or added to the tobacco rod has claimed increased smoke pH, free nicotine concentration and physiological impact."

And then the last paragraph says, "Lark Lights treated with PEA showed increased smoke pH and a six-fold increase in free nicotine while mainstream nicotine and CPM levels remained unchanged." See that?

A. Uh-huh.

Q. At any time before you testified at the Waxman hearing, did anyone tell you that there was research conducted at Lorillard with regard to the addition of any chemicals to the filters of cigarettes in order to increase smoke pH and therefore increase free nicotine?

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MR. WACHTELL: Object to the form of the question, and also lacks foundation.

Object to the form of the question in that it lacks foundation. Excuse me.

A. Could you repeat the question, please?

Q. Yes.

At any time before you testified at the Waxman hearing, did anyone tell you that there was research conducted at Lorillard with regard to the addition of any chemicals to the filters of cigarettes in order to increase smoke pH and therefore increase free nicotine?

MR. WACHTELL: Object to the form of the question as lacking foundation, misleading, misstates the document.

A. I do not believe so.

Q. Are you aware of additives of any kind that have been added to Lorillard cigarettes in the filter for any purpose?

A. I believe I might have.

Q. Do you know at what period in time you were aware of that?

A. I believe it -- it might have been in the overall construction of the cigarette. Could have been in the 1970s. Could have been in my tenure as

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CEO. But I -- I knew -- I knew we had additives to the cigarettes.

Q. Are additives --

MR. WACHTELL: That wasn't the question. The question was additives in the filter.

A. I know -- I'm sorry. I know we had additives in the filter. I wasn't sure for what purpose.

Q. Do you know whether, in the disclosure of ingredients and additives that is made to HHS, whether disclosure is made of additives to the filter?

A. I do not know.

Q. Let me show you next what's been previously marked in this litigation as Plaintiffs' Exhibit 1220. It is a memorandum on Lorillard letterhead dated July 25, 1984 from J. M. Johnson to M. S. Ireland, subject, "Evaluation of Potassium Acetate as a Cellulose Filter Additive," bears Bates numbers 81070726 through 727.

A. I have an extra page here then.

Q. Let me see what you've got.

MR. MONICA: The designated document has three pages.

MR. FINZEN: Yes. Yes. And the record should reflect that the -- it is three pages and the

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final page should be 728. I misread it.

BY MR. FINZEN:

Q. Have you seen this document before?

A. I do not believe so.

Q. The memorandum in the first two sentences says, "Potassium acetate was evaluated as a possible cigarette filter additive. The object of this experiment was to increase nicotine/CPM levels in smoke by adding an alkali compound to cellulose filters to deacidify the cellulose." See that?

A. Yes.

Q. And the conclusion at the bottom of the page says, "Addition of potassium acetate caused significant increases in nicotine delivery, parens, 28 percent, comma, 45 percent, close parens, and nicotine/CPM levels, parens, 19 percent, comma, 36 percent, close parens, relative to the control."

My question is: Were you aware at any time before you testified at the Waxman hearing that there were alkali compounds added experimentally to Lorillard cigarettes for the purpose of increasing nicotine-to-tar ratios in cigarettes?

MR. WACHTELL: Object to the form of the question as without foundation.

A. No, I do not believe I was aware.

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Q. I show you what's been previously marked as Plaintiffs' Exhibit 1221 in this litigation. It is a memorandum on Lorillard letterhead dated August 3, 1984 from M. A. Sudholt to M. S. Ireland, bears Bates numbers 81070723 through 725.

Have you seen this document before?

A. I do not believe so.

Q. The subject of this document -- memorandum is "Evaluation of Cellulose Derivatized With N,N-diethylglycine" --

A. "Dimethyl."

Q. I'm sorry, "...dimethylglycine.hydrochloride to Give 23 Percent Increased Nicotine/DPM -- Nicotine over DPM Ratio," and first sentence says, "One object of the nicotine project has been to increase the level of nicotine relative to tar in cigarette smoke. Increased ratios of nicotine to DPM as high as 66 percent were obtained with dimethylamino-ethyl cellulose ion exchanger purchased from Whatman." See that?

A. Yes.

Q. This memorandum dated in August of 1984 refers to, in that sentence, something called "the nicotine project." Do you know what is being referenced there? Do you know what "nicotine project" means in

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the context of this memorandum?

A. I do not.

Q. Do you know whether the nicotine project referenced in this memorandum is related in any way to the nicotine augmentation project that we saw in a previous exhibit?

A. I do not.

Q. Before you testified at the Waxman hearing, did anyone make you aware of the fact that in or about August of 1984, work was ongoing in Lorillard research with regard to a nicotine project aimed at increasing the level of nicotine relative to tar in cigarette smoke?

A. I do not believe they did.

Q. Let me show you now what's been previously marked in this litigation as Plaintiffs' Exhibit 1222. It is a memorandum on Lorillard letterhead dated February 6, 1985, from M. A. Sudholt to M. S. Ireland, the subject is "Increased Impact of Cellulose-Malic Acid Filter Containing Migrated Nicotine." Have you ever -- and it bears Bates numbers 80642659 through 661.

Is this a document that you have ever seen before?

A. I do not believe so.

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Q. The first sentence of this memorandum says, "The major objective of the nicotine project has been to increase the physiological impact and/or nicotine to tar ratio in ultra low tar cigarettes. Ultra low tar cigarettes generally have little taste or impact and high pressure drop." See that?

A. Yes.

Q. Were you aware, at the time that you were CEO of the company, of the phrase "ultra low tar cigarettes" in -- in Lorillard?

A. The designation "ultra low tar?"

Q. Yes.

A. I -- I was.

Q. And what did that mean to you when you were CEO of the company, "ultra low tar?"

A. Excuse me one second. (Sneezing).

Q. Bless you.

A. Thank you.

I believe that was the designation for cigarettes under five milligrams tar.

Q. Did you have an understanding while you were CEO of the company that cigarettes that were designated ultra low tar had a problem with pressure drop?

A. I don't believe I was.

Q. Do you know what the term "pressure drop" refers

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to as it's used in this memorandum?
A. I can -- I can only infer.
Q. What --
What do you infer?
A. That when you sucked in on the cigarette, you know, there was not much pressure. I'm -- my inference is that you got a lot of air, basically like -- like breathing in a -- a straw that's got a lot of holes in it.
Q. The third sentence of the memorandum says, "One of the approaches which has been studied over the past two years to achieve the goal is adding nicotine to the filter. It has been shown that cigarettes containing nicotine or inert supports in cavity filters did have increased physiological impact typical of that found when nicotine had been added to RL in the blend. A change in nicotine to tar ratios was not always measurable with added nicotine in either the filter or tobacco." See that?
A. Uh-huh.
Q. Were you ever aware, before testifying at the Waxman hearing, that research had been done inside Lorillard with regard to the addition of nicotine to the filter of cigarettes for purposes of increasing the nicotine impact of the cigarette?

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A. I was not aware of that.
Q. The second sentence says, "The ultimate goal of this part of the project is to increase the amount of nicotine which, quote, migrates, close quote, to the filter" --
A. Hold on. Where --
Where are you reading from?
Q. First sentence, second paragraph.
A. Okay.
Q. "...'migrates' to the filter from the tobacco while cigarettes are stored, prior to consumption." See that?
A. Yes.
Q. Then says at the bottom of the last sentence of that paragraph, "The impact of cigarettes made with these filters which contained migrated nicotine was greater than the same filters without migrated nicotine." See that?
A. Yes.
Q. At any time before you testified at the Waxman hearing, were you aware of a research project at Lorillard that attempted to get a higher level of migration of nicotine to the filter itself from the tobacco?
A. No, I was not aware of any such study.

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Q. Looking back at your testimony that appears at Exhibit 1226, runs from pages 22 to 24, would you agree that all of these research projects that we have looked at here this morning and early afternoon made your testimony before Congress with regard to nicotine levels following tar levels not true?

A. No, sir.

Q. Would you agree that the work that we've seen in these Lorillard research projects made your testimony before Congress misleading?

MR. WACHTELL: Excuse me. I object to the question as misleading, and previous question as well. You may answer.

A. No, sir.

Q. It's true, is it not, that the level of nicotine in Lorillard products is not solely determined by the tobacco in the blend; is it?

MR. WACHTELL: Can I have the question back, please?

(record begun to be read by the court reporter.)

MR. WACHTELL: Read slowly. The lawyers have screens, but the witness doesn't.

(Record read by the court reporter.)

MR. WACHTELL: He's testified to that

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previously, that it's impacted by porosity, filters, a lot of other things. Asked and answered.

MR. FINZEN: All right. That's your objection. No coaching.

You may answer.

MR. WACHTELL: I'm not coaching. He testified to it.

A. Okay. I'd like to go through and see exactly what I said in the testimony.

Q. Take your time.

MR. WACHTELL: But the question didn't have anything to do with the testimony, it's just a question about --

That's why I wanted you to listen to the question.

THE WITNESS: Right.

MR. WACHTELL: And you previously answered it.

MR. FINZEN: You may answer.

MR. WACHTELL: You want to hear the question? Listen to the question, please. The question is not referring or referencing your testimony.

THE WITNESS: Okay. Can I have the question, please?

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Q. The level of nicotine in Lorillard products is not solely determined by the tobacco in the blend; is it?

MR. WACHTELL: Are you talking about level of nicotine in the cigarette, or the level of nicotine in the smoke? Which is the question?

MR. FINZEN: In Lorillard products.

MR. WACHTELL: In the tobacco rod or the smoke? Can you clarify, please?

MR. FINZEN: Well let's start within the tobacco.

A. The level of nicotine --

Give me the specific question, if you would, please.

Q. All right.

Turn, if you would, in Exhibit 1226 on page 22. You have the very beginning of your testimony there?

A. Right after Mr. -- "REP. WAXMAN?"

Q. Right. Correct.

A. Yes.

Q. Third line down, the end of that line, "...the level of nicotine in the products manufactured and sold by Lorillard is solely determined by the tobacco that we buy and the blending of the different tobaccos used in our manufacturing." Do you see

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that?
A. Yes.
Q. That statement is not true; is it?
A. "...the level of nicotine in the -- in the products manufactured and sold by" -- I believe it's --
I believe it is true.
Q. The next paragraph, the last sentence, the first clause of that sentence, "Nicotine levels follow tar levels...." See that?
MR. WACHTELL: I think -- I think you're taking that out of context. You can't read that without the preceding sentence.
Q. Well my question to you is that your testimony that nicotine levels follow tar levels is not true; correct?
MR. WACHTELL: I object to the question as misleading, taking it out of context, and without foundation. Also vague and ambiguous.
MR. FINZEN: You may answer.
A. Will you repeat the question, please?
Q. Yes.
The statement that nicotine levels follow tar levels for Lorillard products is not true; correct?
A. No, I do not believe that's correct.

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Q. The tar and nicotine yields of Lorillard cigarettes are not determined by a combination of tobacco blends and physical characteristics of cigarette construction; are they?

A. The tar and nicotine yields of our products are determined by a combination of tobacco blends and physical characteristics and so on, as I stated in the testimony. I believe that.

Q. You believe that's a true statement in the -- in the face of the documents that we've seen here this morning and this afternoon?

MR. WACHTELL: We have a mistake in the transcript.

THE REPORTER: We're off the stenographic record.

(Discussion off the stenographic record.)

THE REPORTER: There's a pending question.

MR. FINZEN: Yes.

Q. And the question is: And you believe that the tar and nicotine yields of Lorillard products are determined by a combination of tobacco blends and physical characteristics and so on, you believe that's a true statement in spite of the documents that we've seen here today that you say you weren't aware of before you made that statement.

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MR. WACHTELL: Asked and answered.

Q. Is that correct?

MR. WACHTELL: Argumentative, without foundation, and misleading.

THE WITNESS: May I answer?

MR. FINZEN: Yes, you may answer.

MR. WACHTELL: Yeah.

A. I -- I don't know enough about the documents to know whether these statements are -- are different from what I said, what I previously testified.

Q. And your statement to the committee that Lorillard has not undertaken any studies and research on the physiological effects of nicotine, in the face of the documents we've seen today, that's not a true statement either; is it?

A. Repeat the question, please.

Q. Yes.

And your statement to the committee that Lorillard has not undertaken any studies and research on the physiological effects of nicotine, in the face of the documents we've seen here today, that's not a true statement either; is it?

MR. WACHTELL: Object to the form of the question as without foundation. You may answer answer.

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A. I -- I -- I believe it is a true statement. I believe my statement -- my testimony stands.
Q. And your statement to the committee that Lorillard --
MR. WACHTELL: I'm sorry, I -- I --
Can we have a clarification? When you're asking him "true," does -- are you asking him whether he believes it to be true when he gave it? What is your question?
MR. FINZEN: I'm asking whether he believes it is a true statement -- in light of the documents we've seen today, whether it is a true statement.
A. I -- I don't know enough about these -- these documents at this point to -- to change my -- my testimony.
Q. And your testimony to the committee that Lorillard does not take any steps to assure a minimum level of nicotine in our products, in light of the documents we've seen today, do you believe that to be a true statement?
MR. WACHTELL: Object to the form of the question as argumentative and ambiguous and misleading, and misconstrues the documents that were shown to the witness today.
A. I -- I believe that my testimony, to the best of

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my ability, stands.

Q. And your testimony to the committee that, since 1971, every cigarette advertisement has carried a complete disclosure of the tar and nicotine content, in light of the documents we've seen today, the tar and nicotine contents shown on those advertisements does not necessarily reflect the real nicotine delivery of Lorillard cigarettes; does it?

MR. WACHTELL: Object to the form of the question as argumentative, misleading, without foundation, and vague and ambiguous.

A. Yeah, you -- you have the advantage there of having a question that you've framed out, and I'm trying to figure out all the negatives and positives and "do you believe that this is not true," and I'm -- you know, I'm having trouble following these questions.

If you can simplify them a little bit, it may make -- may make it a little bit easier for everyone.

Q. Well if you look at the bottom of page 23 over to the top of page 24 where you talk about the information about nicotine content of Lorillard products, you say at the end of that sentence on the top of page 24, "...since 1971 every cigarette advertisement has carried a complete disclosure of

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the tar and nicotine content." See that?
A. Yes.
Q. And my question is: Based upon the documents we've seen here today, however, the tar and nicotine contents shown on those advertisements does not necessarily reflect the real nicotine delivery of Lorillard cigarettes; does it?
MR. WACHTELL: Object to the form of the question as vague and ambiguous, without foundation, misleading, and misstates the documents you've shown to the witness today.
A. I believe that it does. I believe that the tar and nicotine numbers that we've released since 1971 do reflect the tar and nicotine contents of the cigarettes by the FTC method.
Q. If you had seen or been aware of the documents that we've seen here today, all of the exhibits showing the Lorillard studies, would you have testified the same way as you did before the Waxman hearing?
MR. WACHTELL: Which testimony are you referring to?
MR. FINZEN: Testimony this morning.
MR. WACHTELL: We've got three -- three pages here. Would you point the witness to some

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particular statement?

Q. The testimony in these three pages before the Waxman hearing. Would you have testified in this same way?

MR. WACHTELL: Object to the question as overbroad and compound and vague and ambiguous, argumentative, and without foundation.

A. I would have probably asked a few questions of my research people, gotten clarification, and decided at that point whether they fit within the -- within the purview of what was being asked for. I don't know that I would have changed my testimony or not.

Q. Were you present when Dr. Spears testified on April of 1994, April 14?

A. That was the date of the --

Q. Waxman hearing, yes.

A. I was --

Yes, I was.

Q. Turn, if you would, please, to page 79 of the transcript. Do you recall the testimony of Dr. Spears regarding his 1981 article during the April 14th hearing?

A. Vaguely.

Q. Take a look, if you would, please, at the bottom paragraph on page 79 where Dr. Spears testifies, "The

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suggestion that my 1981 article provides nicotine manipulation, as stated in your press conference, Mr. Chairman, appears to result from a total misunderstanding of the data, the design and manufacture of cigarettes from an agricultural commodity in varying compositions. I've also looked at your staff report on that '81 article, and I would like to address two specific things there. One, they indicated that this article suggested that there was ongoing research in the industry to raise the nicotine level of tobacco so that nicotine would be higher than tar. That was work that came out I think the tobacco working group of the National Cancer Institute, was being conducted by US -- by the USDA and the land-grand universities in the tobacco-growing states. It had nothing to do with the manufacturers of this industry. Inference that it was the manufacturers in this staff report is totally incorrect." You see that?

A. Yes.

Q. His testimony that there was no research ongoing in the industry to raise the nicotine level of tobacco was not true; was it?

A. I don't know that to be a factual statement.

Q. Do you recall the exhibits we've seen here this

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morning that showed Lorillard's research into raising the nicotine level of tobacco?

A. I recall the exhibits we saw this morning.

Q. And if we look at the first of those exhibits to the last, we'll see that they ran from 1973 to 1985, 12 years of research by Lorillard on doing just that, raising the nicotine level of tobacco in cigarettes; isn't that correct?

MR. WACHTELL: Object to the form of the question as without foundation, and misleading, misstates the documents.

A. I'd have to have a better understanding of the documents. This is the first time I've seen these documents.

Q. And do you recall we saw several documents where Lorillard, through its employees writing the memos, said it believed that Philip Morris and others were already manipulating levels of nicotine in their cigarettes? Do you recall those?

MR. WACHTELL: Object -- object to the form of the question as mis -- without foundation and misrepresents and misstates what was in the documents that you showed the witness.

Q. Do you recall those documents, sir?

A. Could you repeat the question, please?

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Q. Yes.

Do you recall we saw several documents where Lorillard, through its employees writing the memos, said that it believed that Philip Morris and others were already manipulating levels of nicotine in their cigarettes. Do you recall those documents?

MR. WACHTELL: I have noted my objections.

A. The only --

The only specific brand I recall was Vantage, and I believe that was a Reynolds brand, and you may want to refresh my memory on that.

Q. Take a look at Exhibit 1201.

A. Which one is that, sir?

Q. It will be numbered. Well --

MR. WACHTELL: I don't think the witness had numbers on his copies, necessarily, when they were previously marked.

A. Give me the date of the memo. That may be --

Q. I can do that.

THE REPORTER: We have to change tape. Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Exhibit 1201 is the document that -- the subject of which is "NICOTINE AUGMENTATION PROJECT."

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A. Is that dated May 4th, 1976?
Q. Correct.
Turn to page three, please.
A. Okay. Can you repeat the question?
Q. Yes. Look at the bottom -- well there's --
Right now let me ask you another question first. Turn to page three, at the bottom of the page, the last paragraph.
A. Uh-huh.
Q. See the second sentence, "Evidence indicates that Philip Morris is successfully using this procedure?"
A. Yes, I see that.
Q. It refers to nicotine being applied to either the whole blend, the filter, or the leaf.
A. Uh-huh.
Q. Take a look, then, if you would, at Exhibit 1203, which is the Research -- Lorillard Research Center, Greensboro document with a date of June 8, 1976.
A. I see that.
Q. Turn, if you would, please, to page three.
A. Yes. That was the reference that I made to Vantage.
Q. I'm sorry?

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A. That was the reference I made to Vantage prior to this.
Q. Yes.
A. This is the comment.
Q. The reference to Vantage with regard to R. J. Reynolds; correct?
A. That's correct.
MR. WACHTELL: Well let's get the actual quote because your question was that people believed. That was the question I objected to as misleading. This doesn't say that. Let's get the actual quote on the record.
Q. The quote in this document on page three says, "This indicated that a small amount of free nicotine added to the tobacco at a level low enough not to significantly change the T&N numbers did provide the impact of a regular higher nicotine cigarette. This may be what R. J. Reynolds is doing with Vantage."
MR. WACHTELL: "This may be."
Q. See that?
A. Uh-huh.
THE REPORTER: Your answer?
THE WITNESS: Yes.
Q. Okay. Turn to Exhibit 1204, to the June 16, 1976 memo from Minnemeyer to Spears.

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MR. WACHTELL: Which date is this?

MR. FINZEN: June 16, 1976.

THE WITNESS: June 16. Here you go.

MR. WACHTELL: I can't find it. I'll look on with you. Yeah.

Q. Page two, third full paragraph, second sentence --

A. "Whether correct or incorrect..." --

Q. Right. "...it had been the impression of those personnel working directly on this project that competitive companies were adding nicotine to their products." See that?

A. Uh-huh. Yes.

MR. WACHTELL: Well --

Q. Turn to page --

MR. WACHTELL: -- can we get the --

Q. Turn --

MR. WACHTELL: You started reading midstream of the sentence, Bruce.

MR. FINZEN: No, I read the whole sentence, "Whether correct or incorrect...."

MR. WACHTELL: You didn't read that part.

MR. FINZEN: He -- his testimony, he read that first.

MR. WACHTELL: Yeah. The way appears on

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the transcript, it doesn't appear as he's reading it, and we don't have a complete, full sentence on the transcript.

Q. All right. Why don't you read the sentence, sir.

MR. WACHTELL: "Whether correct or" --

MR. FINZEN: No, no. I want the witness.

MR. WACHTELL: Oh, the witness.

MR. FINZEN: I don't -- I don't want your testimony.

MR. WACHTELL: You don't want me to read it out loud?

MR. FINZEN: I am trying not to get your testimony, I'm trying to get the witness's testimony.

MR. WACHTELL: I'm just trying to get the whole sentence. You can read it.

MR. FINZEN: Go ahead, sir, read the sentence.

A. "Whether correct or incorrect, it had been the impression of those personnel working directly on this project that competitive companies were adding nicotine to their products," quote, unquote.

Q. Okay. Turn to Exhibit 1205.

MR. WACHTELL: These questions have all

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been asked and answered, Bruce.

Q. Turn to Exhibit 1205.

MR. WACHTELL: I mean how many -- how many times are you going to ask the witness -- show him the same things in documents that he has testified he hasn't seen them before and ask him to read sentences from documents he hasn't seen before?

MR. FINZEN: Herb, come on.

MR. WACHTELL: You're not entitled to do this.

MR. FINZEN: I am. I am.

MR. WACHTELL: Well maybe a little bit, but you aren't going to do it much more, I'll tell you that.

You've mischaracterized these documents, and as a result of your mischaracterization you're now going back and asking him to read sentences again and to acknowledge that there are sentences in documents that he previously acknowledged were in documents that he testified he's never seen before. I don't know what the purpose of asking the witness for the second time to acknowledge sentences exist in documents that he testified he was not aware of. I mean are you going to do it a third time when you get through doing it the second time after you again

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misstate the document?

MR. FINZEN: And my question to him was: "Do you recall we saw several documents where Lorillard, through its employees writing memos, said that it believed that Philip Morris and others were already manipulating levels of nicotine in their cigarettes?"

MR. WACHTELL: Yeah.

MR. FINZEN: "Do you recall those?"

MR. WACHTELL: And I objected to that question --

MR. FINZEN: And you objected.

MR. WACHTELL: -- as misstating the documents, which indeed that question did do when he said believed.

MR. FINZEN: And he said he recalled only one. So we're now looking at the documents so that he can recall the others.

MR. WACHTELL: Well --

MR. FINZEN: Turn to Exhibit 1205, sir.

MR. WACHTELL: Well you can do this very shortly before I call a halt.

Q. Turn to Exhibit 1205.

A. Which document is that?

Q. That's the document that is a Lorillard

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Greensboro Research Center document dated July 12, 1976.

A. I see that.

Q. Turn to the bottom of page 11. And -- I'm sorry, to the top of -- I'm sorry, to the first -- second paragraph of page 12, about three sentences down, "It is likely that Philip Morris adds either diammonium phosphate or ammonium hydroxide to their RL." See that?

A. Yes.

MR. WACHTELL: Asked and answered. He saw it before, he sees it again. He'll see it if you show him the third time or a fifth time or a 10th time.

Q. Now the question that I asked you: In light of these documents and the statements made in those documents by Lorillard employees, the testimony given by Dr. Spears that there is not nicotine addition and manipulation to cigarettes or research regarding that in the industry is not a correct statement; is it?

MR. WACHTELL: Can you --

Can you show me the statements you're talking about?

Q. Bottom of page 79 of the transcript, referring to Congressman Waxman's staff, he says "...they

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indicated that this article suggested that there was ongoing research in the industry to raise the nicotine level of tobacco so that nicotine would be higher than tar." Do you see that statement?

A. Yes.

Q. In the face of the memos that we have just looked at again, and the statements by Lorillard employees, that's not a true statement; is it, sir?

MR. WACHTELL: Object to the form of the question as argumentative and without foundation, misstates the documents that were before the witness, misleading, and vague and ambiguous. You're arguing with the witness for no purpose whatsoever, Bruce.

A. I -- I'd need to know more before I knew whether it was true or not.

Q. More than the documents that we've looked at here today?

A. I'd need to know more about the documents.

Q. Do you believe that those documents don't show ongoing research in the industry?

MR. WACHTELL: Object to the form of the question, argumentative, misleading, misstates the documents.

A. I -- I'd have to know more about the documents.

Q. What is it that you would need to know?

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A. I'd have to know the context in which they were written, some of the background on it, some of the things that I did not know, and, you know, would want to know more about them.

Q. Turn to page -- bottom of page 85 of the transcript where Congressman Waxman is referring to Dr. Spears' 1981 article. Do you see that?

A. I believe I do.

Q. And Congressman Waxman says, "Now, he indicated that through a blending process of tobaccos, the nicotine concentrations or levels can be changed and often are separately adjusted from the tar levels. Do you -- Do you do that?"

And Mr. Johnson says, "Repeat the question?"

And we're at the top of page 86.

"MR. SPEARS: That's not in my article, sir.

"REP. WAXMAN: Do you want to turn your mike on?

"MR. SPEARS: That statement is not found in my article that you can separately adjust tar and nicotine.

"REP. WAXMAN: Let me read to you your article. Quote, Based on these trends, one would conclude that the lowest tar segment is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine. Although one cannot conclude

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that this has been achieved solely by the selection of tobacco, it does indicate a trend toward the use of tobacco with higher nicotine levels.'" That's page 22.

"MR. SPEARS: Yes, sir, but you said this indicates you can separate tar from nicotine.

"REP. WAXMAN: That you can adjust separately the tar and nicotine.

"MR. SPEARS: It does not indicate that."

Do you see that?

A. Yes.

Q. In light of the Lorillard research documents that we've seen here today showing that over the course of a dozen years there has been research showing that you could adjust the tar and the nicotine levels separately, Dr. Spears' statement to Congressman Waxman is not true; isn't that correct?

MR. WACHTELL: Object to the form of the question as highly misleading. Dr. Spears was talking about what was in an article, particular article, which you have not shown the witness.

MR. FINZEN: Herb, you --

MR. WACHTELL: How can you ask him to say that something in an article is not true --

MR. FINZEN: Herb, I'm not here to argue

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with you.

MR. WACHTELL: Well --

MR. FINZEN: You're to say objection --

MR. WACHTELL: I objection -- I'm objecting to the question. You've asked the witness whether a statement in an article is false and you haven't shown the witness an article. It's an absurd question, as even you must recognize.

MR. FINZEN: Well the article was read.

Q. In light Lorillard research documents --

MR. WACHTELL: You can ask him --

Q. -- we've seen here today showing that over the course of a dozen years the company conducted research showing that nicotine and tar levels could be separately adjusted, Dr. Spears' statement to Congressman Waxman is not true; isn't that correct, sir?

MR. WACHTELL: Object to the form of the question, argumentative, misleading, vague and ambiguous, and lacks foundation.

MR. MONICA: And I object to the characterization of the research and the summary that you purport to give of what it shows as misleading and vague and confusing.

MR. WACHTELL: I was subsuming that in my

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lack of foundation. But that's okay, you clarified my objection.

A. I don't know whether it's true or not. I would need to know more -- have more information.

Q. And what information would you need?

A. The background of the article, what the article said, and what the use of the -- of the article was.

MR. FINZEN: I need to find a document. Is this a good time to take a break, or do you want to just have me find it?

MR. WACHTELL: No, if it's a convenient for you, of course.

MR. FINZEN: Fine.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Tisch, at the congressional hearing in April of 1994, Representative Wyden asked you and the other CEOs present whether you believed nicotine is addictive. Do you recall that?

A. I do. I do recall that.

Q. And you testified that you believed that nicotine is not addictive; is that correct?

MR. WACHTELL: Can we have a page reference, please?

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Q. Is that correct?

MR. WACHTELL: Can we have a page reference, please?

A. I believe I testified to that effect.

Q. And if you look at page 44 of the transcript, I think your testimony appears on that page saying that you believe that nicotine is not addictive; does it not?

A. It does say that.

Q. Would you agree that a cigarette is a delivery system for nicotine?

MR. WACHTELL: Object to the form of the question as vague and ambiguous.

A. I'm not sure how I would answer that one. I think one of the things that a cigarette does is deliver nicotine, but it -- I wouldn't say that it is solely a nicotine-delivery device or primarily a nicotine-delivery device.

Q. Would you agree that the reason people smoke is for the physiological satisfaction gained from nicotine?

MR. WACHTELL: Is that question "the reason?" Is that what you said?

MR. MURPHY: Yeah.

MR. WACHTELL: Okay.

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A. No.
Q. Are you aware that Lorillard has known for many years that the most probable reason for the addictive properties of cigarette smoke is the nicotine?
MR. WACHTELL: Object to the form of the question as vague and ambiguous and without foundation and misleading.
A. I'm not -- I'm not sure.
Q. Let me show you what has previously been marked in this litigation as Plaintiffs' Exhibit 1186. It is a memorandum on Lorillard letterhead dated July 16, 1976 from M. S. Ireland to Dr. H. J. Minnemeyer, bears Bates number 00044522 through 523.
Have you seen this document before?
A. I don't believe so.
Q. In the first paragraph Ms. Ireland writes, "Cigarette sales are made for one reason. The customer is satisfied with the product either from the taste or the physiological satisfaction derived from the smoke. The consensus of opinion derived from a review of literature on this subject indicates the most probable reason for the addictive properties of the smoke is the nicotine." Do you see that?
A. Yes.
Q. Prior to the time that you testified at the

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Waxman hearing, were you aware that there was research inside Lorillard indicating that the most probable reason for the addictive properties of smoke is the nicotine?

MR. WACHTELL: Object to the question as vague and ambiguous, without foundation, misleading, and misstates the document.

A. I -- I don't know that that says that there's research inside Lorillard. I don't know -- I don't know that this -- that this says that.

Q. Is --

Is your answer to my question "no?"

MR. WACHTELL: Well --

A. My answer to your question is I don't know what you -- I don't know what the reference is to your question; therefore, I really don't know what -- what to answer.

MR. WACHTELL: Apart from the document, I -- I think, without reference to the document, would you like the witness's answer to the question?

MR. FINZEN: Yes.

MR. WACHTELL: Can we have the question reread, please?

(Record read by the court reporter.)

MR. WACHTELL: I have my objections on the

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record, but you may answer that question, if you can.
A. I wasn't aware then and I'm still not aware.
Q. Did you hear from any source before -- inside Lorillard, any source inside Lorillard before you testified at the Waxman hearing, that the most probable reason for the addictive properties of cigarette smoke is the nicotine?
MR. WACHTELL: When you say "before," you mean immediately before, or any time over 20 years before?
MR. FINZEN: At any time. At any time before.
A. I don't recall hearing any such thing.
Q. The next sentence in the -- in the memorandum from Ms. Ireland says, "Indications are that the smoker adjusts his smoking habits to satisfy the desire for nicotine either by frequent or large puffs on the cigarette, or smoking a large number of cigarettes."
Now prior to the time that you testified at the Waxman hearing, had you ever heard anyone inside Lorillard talk about the phenomenon of smokers adjusting their smoking habits in order to gain a certain desired amount of nicotine?
MR. WACHTELL: Object to the form of the

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question. You can answer.
A. I don't believe I did.
Q. By the time of your testimony at the Waxman hearing, had you seen any documents at Lorillard that indicated that nicotine accounts for all of the pharmacological effects of smoking?
A. I don't believe I did.
Q. Let me show you a document that's been previously marked as Plaintiffs' Exhibit 1187 in this litigation. It is a Lorillard Research Center Greensboro memorandum titled "THE PHARMACOLOGY OF SMOKE-DOSE NICOTINE, A REVIEW OF CURRENT LITERATURE" submitted by Dr. H. S. Tong, bearing the date October 7, 1976, Bates numbers 80192103 through 113.
Have you seen this document before?
A. I do not believe so.
Q. The abstract -- summary of abstract on the first page says, "A review has been made of the literature on the pharmacology of smoke-dose nicotine with the goal of discovering some indications of threshold dose and optimum doses of nicotine in the average cigarette smokers." See that?
A. Yes.
MR. WACHTELL: It says -- it says "Summary or Abstract," Bruce. I think you misspoke.

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MR. FINZEN: I'm sorry, did I misspeak?

MR. WACHTELL: I think you did, yeah.

MR. FINZEN: Okay. Stand corrected.

Q. Then if you turn the page to the first page of the memorandum itself, under "Introduction," under numbered paragraph one, or the reference to number one there at the margin, do you see that, at the first paragraph?

A. First paragraph, number one.

Q. "The pharmacological effects most likely are due to the action of nicotine since the presence of a variety of other chemical components in the smoke in all probability is below their threshold levels." See that?

MR. WACHTELL: I don't think you -- I don't think you can read that sentence without reading the preceding sentence. I think you're taking it out of context.

MR. FINZEN: Do you want me to read the first sentence?

MR. WACHTELL: Yes.

MR. FINZEN: Before I ask the question?

THE WITNESS: Just correct the typo in here.

MR. WACHTELL: Yeah. When you read it,

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it's "definitive," not "depinitive," but it would be helpful if you read it, please.

Q. All right. Let me read the first -- let me read the two sentences together then.

"Despite the lack of definitive" --

You would agree that's a typo?

MR. WACHTELL: Yes.

A. Yes.

Q. -- "knowledge, it seems probable that smokers choose cigarette smoking for sensual, psycological, social, cultural, and pharmacological effects. (1) The pharmacological effects most likely are due to the action of nicotine since the presence of a variety of other chemical components in the smoke in all probability is below their threshold levels." Do you see that?

A. Yes.

Q. Prior to the time that you testified at the Waxman hearing, were you aware from any source that there were pharmacological effects in human beings from exposure to nicotine?

A. I might have been.

Q. And what would have been the source of your knowledge?

A. Probably Dr. Spears.

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Q. Before testifying at the hearing, were you aware that the pharmacological effects from cigarette smoking were most likely due to the action of nicotine as opposed to other components that are contained in the smoke?

A. It's -- it's entirely possible.

Q. Again your source would have been Dr. Spears?

A. Most likely.

Q. If you go down, then, to the second paragraph on that page, the first sentence reads, "Research in drug addition" --

Let me ask you there: Do you think that is also a typo and that that should read "drug addiction?"

MR. WACHTELL: How would the witness possibly know if he's never seen the document before? I mean the other one was obvious. This one is substantive. I object to the question.

Q. Sir?

A. I -- I'd have to read the whole -- the whole memorandum and then make an inference that I'm not prepared to make.

Q. Well let me read the sentence. "Research in drug addition indicates that the CNS is the prime site of drug action. In order to understand the precise action of nicotine in the smoke habit, the

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CNS should be the logical site for study." See that?
A. Yes. I'm trying to figure out what "CNS" is. I -- I see from up above that it talks about central nervous system effects.
Q. Okay.
A. Okay.
Q. Do you see those two sentences?
A. Yes.
Q. In the context of those two sentences, do you think it's more likely that that should have been "research in drug addiction," or do you think it makes sense the way it reads as "drug addition?"
A. I'm not prepared to make that -- that determination.
Q. Were you, before you testified at the Waxman hearing, aware from any source that research indicated that the central nervous system is the prime site of nicotine action on humans?
MR. WACHTELL: Object to the form of the question as vague and ambiguous, lacks foundation.
A. I don't think I was aware of that.
Q. Were you aware that, whether it was referred to as the central nervous system or not, that the pharmacological effects that humans experience from nicotine took place by some reaction of the nicotine

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in the brain?

MR. WACHTELL: Object to the form of the question as without foundation and misleading.

A. I'm -- I'm not sure how -- how I would characterize it.

Q. Were you aware from any source before you testified at the Waxman hearing that when individuals smoked cigarettes, they took nicotine into their respiratory system and the nicotine went from there into the bloodstream of the individual?

A. I might have been. That sounds somewhat familiar.

Q. And were you aware from any source before you testified at the Waxman hearing that when nicotine got into the bloodstream of a smoker, that at some point it would cross the blood/brain barrier?

A. I don't know that I was aware of that.

Q. Did you have any conversations with Dr. Spears before your testimony regarding the pharmacological effect of nicotine on smokers?

A. I don't believe I did.

Q. Turn, if you would, to page two, numbered page two at the top of Exhibit 1187 where it says the heading "Pharmokinetics" or "Pharmokinetic." Do you see that?

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A. "Pharmacokinetic," yes.

Q. "Pharmacokinetic."

The first sentence there says, "The amount of nicotine which could be obtained by a smoker smoking a cigarette, parens, 1 gram, 8 millimeter diameter," abbreviated d-i-a, "times 85 mm 1, period, close parens, is dependent on such factors as nicotine content of the tobacco, pH of the smoke, puff frequency, puff intensity, puff duration, quantity of smoke inhaled, duration of smoke retention and butt length." Do you see that?

A. Yes.

Q. Prior to the time that you testified at the Waxman hearing, had you heard from any source the term "smoker compensation?"

MR. WACHTELL: That seems to be what this litigation is about; isn't it?

A. I -- I might --

I might have heard of the term, the term is not unfamiliar with me, but I can't tell you exactly when I first -- first heard it.

Q. Were you aware from any source before you testified that smokers will adjust their smoking behavior to obtain certain dosages of nicotine in their body?

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MR. WACHTELL: Didn't you ask that five minutes ago? Asked and answered.

A. I -- I wouldn't characterize it as -- as that.

Q. You wouldn't characterize what you had heard as that? I don't understand your answer.

A. I -- I wouldn't characterize it just as -- as nicotine. I would characterize it as -- more as, you know, as smoke.

Q. At the time of your congressional testimony, were you aware of the factors that are recited at the top of page two in this memorandum as being factors that affect the amount of nicotine that a smoker obtains in smoking a cigarette?

MR. WACHTELL: You're misstating the document, Bruce.

MR. FINZEN: I'm asking a question.

MR. WACHTELL: Yeah, but you're asking a question that mischaracterizes the document. I object to the question.

MR. FINZEN: All right.

MR. WACHTELL: Misleading, without foundation, and mischaracterizing the document.

A. I -- I would say that these are factors affecting the amount of -- of smoke.

Q. Okay. Were you aware that puff frequency

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affected the amount of smoke that a smoker would obtain?

A. I -- I believe I was.

Q. Were you aware that puff intensity would affect the amount of smoke that a smoker obtained?

A. I'm not sure which of these I was aware of or which of these I -- I inferred, but, you know, it's logical.

Q. What do you mean by "inferred?"

A. You know, that these -- these are all logical. If you puff deeper, you're going to get more smoke; if your puff lasts longer, you're going to get more smoke; if you puff every 15 seconds instead of every 20 seconds, you're going to get more smoke. You know, I'm not sure if this is something that I knew or something that I just -- that just seemed logical.

Q. And were you aware that in doing these things, smokers are attempting to adjust their nicotine dosage to maintain a certain blood level of nicotine dosage?

MR. WACHTELL: Object to the question, asked and answered and without foundation.

A. I -- I don't --

You know, I don't know if it was because of the nicotine, because of the tar, because of the smoke.

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I don't --

I was never sure why -- why people smoked differently.

Q. Would you look at the bottom of page two of this document and over to the top of page three, it says, "It appears that these smokers adjusted their nicotine dosage to maintain certain blood levels of the agent by smoking fewer cigarettes when higher nicotine cigarettes were substituted for their usual brand." See that?

A. Yes.

Q. And then it refers to certain blood levels with regard to smokers and it says, about the next sentence, "It appears that smokers could regulate their nicotine intake by variation of smoking techniques, besides by smoking different nicotine content cigarettes." See that?

A. Yes.

Q. Were you aware from any source that -- before your testimony at the Waxman hearing, that smokers could regulate their nicotine intake by variation of these smoking techniques?

A. I don't know that I was.

Q. Were you aware that smokers could regulate their nicotine intake by smoking different nicotine content

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cigarettes?
A. I believe I was.
Q. Then turn, if you would, to page seven. Under the "Summary" page there, the third sentence I believe begins "It seems...." Do you see that?
A. Yes.
Q. "It seems that, within limits, smokers can and do control their nicotine intake from smoke by varying their smoking techniques."
MR. WACHTELL: You can't take that sentence out of the context of the two sentences that come before it.
Q. "Nicotine has numerous sites of action and the response is an algebraic sum of its actions. No single parameter appears to offer a reliable handle for measuring optimum satisfaction dose of nicotine at the present time." Do you see that?
A. Uh-huh.
Q. Prior to the time that you testified at the Waxman hearing, were you aware that nicotine had numerous sites of action, and that its response is an algebraic sum of its actions?
MR. WACHTELL: Object to the question as vague and ambiguous, without foundation, mischaracterizes the document.

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A. I -- I don't know what this -- what this means, so I probably was not aware of it.
Q. And it's true, is it not, that you knew that a cigarette without any nicotine delivery at all would not be successful?
MR. WACHTELL: Object to the form of the question as vague and ambiguous. You can answer.
A. I think we -- we saw from market actions on cigarettes without nicotine that the consumer did not buy them.
Q. And that Lorillard knew that even a cigarette with substantially lowered nicotine could not deliver the physiological satisfaction to sustain smokers smoking.
MR. WACHTELL: Object to the form.
Q. Isn't that correct?
MR. WACHTELL: Object to the form of the question as vague and ambiguous, without foundation.
A. I -- I don't know that to be the case.
Q. Did you ever hear of something called the 50 percent lower nicotine project at Lorillard?
A. No.
Q. Were you aware that there ever was such a project?
A. No. Was there?

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Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1188. It's a memorandum on Lorillard letterhead dated November 9, 1976 from R. E. Smith to Dr. F. J. Schultz, re, "LOWERED NICOTINE PROJECT," has Bates number 01244504.

Have you seen this document before?

A. No.

Q. The first paragraph says, "After discussing the 50 percent Lower Nicotine Project with Dr. Spears I agree that we should discontinue work. We all understand that this concept has considerable consumer trial appeal; as quantified in the NPSS concept study. However, it is our judgement that a cigarette with substantially lowered nicotine could not delivered the smoking satisfaction to sustain consumer purchase." See that?

A. Uh-huh.

Q. Did Dr. Spears any time before you testified ever tell you that Lorillard had looked at developing a cigarette with substantially reduced nicotine but abandoned it because they believed that it wouldn't deliver smoking satisfaction necessary to -- to sustain consumer purchase?

A. He did not. But I -- I don't know to what level

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of exploration this -- this product progressed. Because he never told me.

Q. Do you know whether, at any time before you became CEO of the company, Lorillard ever test marketed a cigarette with substantially lowered nicotine?

MR. WACHTELL: Fifty percent lower than what? Object to the question as vague and ambiguous and lacking foundation.

A. I -- I don't know, but I never heard of them marking -- market -- test marketing any such cigarette.

Q. Were you aware before you testified at the congressional hearing in April of 1994 that even with smoker compensation below some very low nicotine level, the diminished physiological satisfaction could not be compensated for by smoker compensation techniques?

MR. WACHTELL: Object to the form of the question as vague and ambiguous and lacking foundation.

A. No, I was not aware of that.

Q. Let me show you what has been previously marked in this litigation as Plaintiffs' Exhibit 1189. It's a document -- a memorandum on Lorillard letterhead

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that is dated February 13, 1980 from Richard E. Smith to Messrs. J. R. Ave, J. G. Flinn and Dr. A. W. Spears, bears Bates number 01394380 through 381.

Have you seen this document before?

A. I don't believe so.

Q. Memorandum says, "This note will specify the goal of the RT Information Task Force, summarize our discussions and point toward next steps. Please suggest any modifications you feel are right."

The goal, "Determine the minimum level of nicotine that will allow continued smoking.

"We hypothesize that below some very low nicotine level, diminished physiological satisfaction cannot be compensated for by psycological satisfaction. At this point smokers will quit, or return to higher T&N brands." See that?

A. Yes.

Q. Did you have an understanding before you testified at Congress that the reason Lorillard had never commercially marketed a cigarette with reduced nicotine was because you felt that smokers would either return to other higher brands or quit as opposed to smoke those brands?

MR. WACHTELL: Object to the question as vague and ambiguous, lacks foundation, and

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misleading.
A. Will you repeat the question, please?
Q. Yes.
Did you have an understanding, before you testified at Congress, that the reason Lorillard had never commercially marketed a cigarette with reduced nicotine was because the company felt that smokers would either return to higher nicotine brands or quit as opposed to smoke those lower nicotine brands?
A. I -- I may have had that understanding. I don't remember.
Q. Did --
Is that an understanding that you learned from someone else or that you felt and believed yourself?
A. I'm trying to remember the -- the specific timing, but I believe that Philip Morris had tried to test a denicotinated brand, and it did not -- did not succeed.
Q. The next bullet point -- or the first bullet point paragraph there says, "There are different ways of smoking; such as deepness and duration of puff and inhalation. These may be modified at varying T&N levels. Parens, This explanation does not fully compensate for the historical drop in nicotine levels, close parens." See that?

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A. Yes.
Q. Do you know what the reference is there to the explanation "doesn't fully compensate for the lower nicotine levels?"
MR. WACHTELL: Doesn't say that. You're misreading the document in your question.
A. I think I understand, and here I'm -- I'm inferring, the tar and nicotine numbers over the years in an average cigarette has dropped fairly significantly, and I -- I can't quote you the -- the numbers, but I -- I believe it's almost logarithmically, and this probably is saying that you can't -- that the smoker does not -- is not smoking as much -- is not getting as much nicotine as he historicly did.
Q. Even with smoker compensation.
A. Even with smoker compensation.
Q. And that is the very reason, is it not, that Lorillard was looking for a way to increase nicotine impact in these low tar cigarettes?
MR. WACHTELL: Object to the form of the question as vague and ambiguous, lacking foundation, misleading, and argumentative.
A. I -- I think you're drawing an inference that I can't -- I can't support.

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Q. The next bullet point says, "There are different types of smokers; ranging from 'social' to 'habituated.'" Do you see that?

A. Yes.

Q. Do you understand there the reference to "habituated" being synonymous with "addicted?"

A. No, sir.

Q. You understand that there are organizations out there that believe that nicotine is addictive? Health -- public health organizations?

A. I do.

Q. And even though Lorillard knew that there was some component of psycological satisfaction in smoking, the company knew that beyond a certain level of nicotine the psycological satisfaction itself would not keep a smoker smoking; isn't that correct?

MR. WACHTELL: Object to the form of the question as vague and ambiguous, lacking foundation.

A. Will you repeat the question, please?

Q. Yes.

And even though Lorillard knew that there was some component of psycological satisfaction to smoking, that below some level of -- minimum level of nicotine there wouldn't be enough physiological satisfaction to keep the smoker smoking?

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A. I don't know that to be the case.
Q. Are you familiar with Lorillard continuing research on the physiological satisfaction of nicotine to smokers and its effect on the central nervous system?
MR. WACHTELL: I don't understand that question. I don't think it's comprehensible.
MR. FINZEN: You may answer.
A. I don't understand the question.
Q. Well are you familiar that Lorillard continued doing research on the physiological satisfaction of nicotine to smokers and nicotine's effect on the central nervous system?
MR. WACHTELL: Continued after what?
MR. FINZEN: At any time.
You may answer.
MR. WACHTELL: That doesn't help. I object to the question --
A. I don't know.
MR. WACHTELL: -- as vague and ambiguous, lacking foundation.
Q. Well, we've seen some documents already that said they were going to do research on the central nervous system effect, physiological effect of nicotine; correct?

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MR. WACHTELL: We've seen documents that say what they said, and I object to your characterization of the documents, I object to the form.

Q. Well can you answer my question?

A. Could you repeat the question, please?

Q. Are you familiar with Lorillard continuing to do research on the physiological satisfaction of nicotine to smokers and its effect on the central nervous system?

MR. WACHTELL: Vague and ambiguous, lacks foundation, misleading.

A. I'm -- I'm not familiar with any -- with that.

Q. Let me show you what's been previously marked as Plaintiffs' Exhibit 1217, a memorandum on Lorillard letterhead dated March 16, 1978 from R. S. Marmor to Dr. H. J. Minnemeyer, subject, "Meeting with Professor Leo Abood - 3/14/78," bears Bates number 00110371.

Have you seen this document before?

A. I don't believe so.

Q. References Professor Abood being at Lorillard and it says, "Professor Abood's lecture here on, quote, In Search of a Site and Mechanism for Nicotine's Action on the Brain, close quote, was well

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attended and well received." See that?
A. Yes.
Q. Do you know who Professor Abood is?
A. No.
Q. Did anyone tell you, prior to your testimony at the Waxman hearing, that Lorillard had worked with Professor Abood at any time in the past concerning the site and mechanism for nicotine's action on the brain?
MR. WACHTELL: Object to the question as vague and ambiguous.
A. I don't believe so, no. I'd never heard of Professor Abood.
Q. At the bottom of this memorandum it says, "In any case, information we gain on the mechanism of nicotine activity may be useful in determining how to adjust physiological impact in our cigarettes. We intend to support Professor Abood by supplying samples and performing some synthetic and computer work." Do you see that?
A. Yes.
Q. Prior to the time of your testimony at the Waxman hearing, did anyone make you aware of the fact that Lorillard had done work with Professor Abood by supplying samples, doing synthetic and computer work,

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or doing any other kind of work?

MR. WACHTELL: Object to the question as asked and answered, lacks foundation, vague and ambiguous.

A. I have --

I don't know that he did. This doesn't say that he did.

Q. Prior to the time of your testimony at the Waxman hearing, did you learn from anyone at Lorillard that Lorillard had done research concerning how to adjust physiological impact of cigarettes, either working with Dr. Abood or anyone else?

MR. WACHTELL: Object to the form of the question, compound, vague and ambiguous, lacks foundation.

A. What was the question, please?

Q. Prior to the time of your testimony at the Waxman hearing, did you learn from anyone at Lorillard that Lorillard had done research concerning how to adjust physiological impact of cigarettes working with Dr. Abood or anyone else?

MR. WACHTELL: Same objections.

A. I may -- I may have. I --

Lorillard had done research over the years, and I'm sure some of the research was on physiological

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effects of smoking. But like I said, I had never heard of Professor Abood until just now, and --

Q. And clearly, the physiological impact that's being discussed with Professor Abood or by Professor Abood here is on the central nervous system; is it not?

MR. WACHTELL: Object to the form of the question, lacks foundation, vague and ambiguous. And the witness has told you now at least five times, I think, by my count, that he never heard of Professor Abood, so I think all these questions are asked and answered.

MR. FINZEN: You may answer.

MR. WACHTELL: Can I hear the question back, please?

(Record read by the court reporter.)

A. It's not -- it's not clear to me.

Q. The title of his lecture was "In Search of a Site and Mechanism for Nicotine's Action on the Brain." Do you see that?

A. Yeah. I -- I don't -- I don't know how I would characterize it. This is the first I've ever seen of this.

Q. Seem apparent from that title that what was being looked at was the physiological impact of

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nicotine on the brain and the nervous system as opposed to any other body part?

MR. WACHTELL: Object to the form of the question, without foundation, misleading, vague and ambiguous.

A. I --

You know, from -- from the title, but I -- I -- you know, I'm not a scientist, and I'm not going to characterize it any way that I'm not -- I'm not comfortable with.

Q. And based upon its research and from all sources, Lorillard knew that nicotine at some level was essential to maintaining smokers smoking; correct?

A. Repeat the question, please.

Q. Yes.

Based on research from all sources, Lorillard knew that nicotine at some level was essential to maintain smokers smoking; correct?

A. I wouldn't say --

MR. WACHTELL: I object to the form of the question as vague and ambiguous and without foundation.

A. I wouldn't say all sources. Based on information from sources, you know, nicotine was an

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important element in the smoking sensation and the enjoyment.

Q. And that products had been introduced into the market that did not contain nicotine that were built to be cigarettes without tobacco and nicotine that were not successful?

MR. WACHTELL: Object to the form of the question.

Q. Are you aware of that?

MR. WACHTELL: Object to the form of the question. I think you misstate it, and the question is vague and ambiguous. He's already answered it. To the extent you haven't misstated it, he's already answered the question. You didn't mean to say "without tobacco" in your question.

MR. FINZEN: Yeah, I did mean "without tobacco."

A. I know over the years people have used lettuce cigarettes and clove cigarettes as tobacco alternatives. I don't know what the rationale for them was.

Q. And those products were not successful; correct?

A. I think they still make clove cigarettes, so I'm not sure. I mean certainly -- certainly they're not extensively commercially marketed.

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Q. And the lettuce cigarettes that you mentioned failed commercially; did they not?
A. I -- I don't know if they still make them or not. But certainly they're not -- they're not challenging the Marlboro Man.
Q. And those cigarettes made of lettuce would -- were built to look like cigarettes; is that correct?
A. I believe they were.
Q. And they lit and smoked like cigarettes in terms of the hand and oral aspects of cigarette smoking; correct?
A. I believe that's correct.
Q. Do you believe that if it wanted to, Lorillard could reduce the nicotine content of tobacco to nearly zero?
A. Commercially, or in research?
Q. Commercially.
A. I don't know that they could.
Q. Do you know whether there's been research looking into that?
MR. WACHTELL: By Lorillard?
MR. FINZEN: By Lorillard.
A. I don't know.
Q. Because of the phenomenon of smoker compensation that we talked about a while ago, Lorillard knows

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that smokers of low tar cigarettes get -- get much higher levels of tar than the FTC tar and nicotine levels show; isn't that correct?

A. That is not correct.

Q. Let me show you what's been previously marked -- Hold on one second. We're going to have to go off the record a minute. My copies didn't get -- looks like they didn't get fully copied here.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Tisch, let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1191. It is a memorandum on Lorillard letterhead dated July 30, 1980, from S. T. Jones to a number of named recipients and it bears Bates numbers 81187531 through 552.

Have you seen this document before?

A. I don't believe so, no.

Q. Let me ask you to turn to page eight of the document, if you would.

MR. WACHTELL: Page eight of the document or page eight of the -- of the --

MR. FINZEN: Of the attached --

MR. WACHTELL: -- review, of the review

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which is attached?

MR. FINZEN: Page eight -- page eight of the attachment.

MR. WACHTELL: Okay.

MR. FINZEN: It says "Page Eight" at the top of the page.

MR. WACHTELL: Fine.

Q. Do you have the page?

A. Uh-huh.

Q. The second full paragraph on that page says, "The evidence to date clearly indicates that smokers titrate or regulate their intake of nicotine, e.g. smokers of cigarettes which deliver large amounts of nicotine will adjust - when given low nicotine cigarettes - their smoking to get a larger nicotine dose than the machine determined values indicate. Also, smokers regulate their intake -- nicotine -- their nicotine intake over time when smoking their regular brand." Do you see that?

A. Yes.

MR. MONICA: Bruce, let's take a moment here. I could be wrong, but I believe you only designated the first page of this document.

MR. FINZEN: Well this is -- this is the exhibit we used last week as Exhibit 1191.

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MR. MONICA: Is it --

Well I'm looking at the predesignation here, 81187531. I'm sorry, it's --

And then the one right under that, that's the second part. Okay.

MR. FINZEN: Right.

MR. MONICA: You're correct.

Now got by that one. Now the next one is: Can we establish that the underlining on this document is yours and not -- was not on the document when you were given it?

MR. FINZEN: The underlining is mine. It's not -- the exhibits --

This isn't an exhibit that's going to be part of the record anyway. It's the one from last week, first time it's marked.

MR. MONICA: So we're going to --

What's going to be the procedure, then, you suggest on using this document when it becomes part of the record?

MR. FINZEN: The exhibit from last week will be the exhibit that goes with this transcript.

MR. MONICA: It will be. And we will not use this physical copy that we have here.

MR. FINZEN: Correct. That's correct.

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MR. MONICA: All right. Just so the witness knows that the underlining is yours and not -- was not on the original. Correct?

MR. FINZEN: Correct.

MR. MONICA: Okay. Thank you.

BY MR. FINZEN:

Q. All right. I think we had just looked at the part that is underlined and we just discussed. Do you see that, sir?

A. Yes.

Q. My question to you is: At any time before you testified at the Waxman hearing, were you made aware that Lorillard knew that smokers, by compensating or adjusting their smoking habits, got larger amounts of nicotine than the FTC machine-determined values of nicotine showed?

MR. WACHTELL: Object to the form of the question as lacking foundation.

A. I, first of all, wouldn't characterize it as Lorillard knew. I don't know that to be a fact. Could have been the author believed. I mean, you know, it doesn't -- it doesn't say Lorillard knows that. But I don't know this to be -- I -- I --

I was not made aware of anything in this area.

Q. Well would you agree, at least, that by July 30

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of 1980, the individuals who are listed as receiving this document that we're looking at -- and there are eleven plus a cc to another individual -- that those individuals at least were aware that the evidence as of that date clearly indicates that smokers titrate their nicotine amounts and get larger amounts than the machine-determined values would indicate?

MR. WACHTELL: I -- I think you are misstating this document, and that's the problem when you just take one sentence out of the context and don't look to see what the overall document is and what it reflects. I think the question lacks foundation and is vague and ambiguous.

MR. FINZEN: You may answer.

A. I don't --

I don't even know what this document is or is for, and I -- I know --

You know, I can see who the document was written to, and, you know, it's -- I'm not even sure how this document was -- would have been used.

Q. But it wasn't just from this document, sir, that people inside Lorillard knew that smoking -- smoker compensation caused higher levels of both nicotine and tar to be received by smokers; is it?

MR. WACHTELL: Is that a question --

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MR. FINZEN: Yes.

MR. WACHTELL: -- or is that just an argument?

MR. FINZEN: No.

A. What's the question?

Q. It was well known from a variety of different sources, was it not, that smoker compensation caused smokers to get higher levels of both tar and nicotine than shown in the FTC smoking numbers?

MR. WACHTELL: Was well known to people --

MR. FINZEN: Inside Lorillard.

MR. WACHTELL: -- at Lorillard, or was well known to the witness before he testified before the committee? What is your question?

MR. FINZEN: Inside Lorillard. Was well known to people inside Lorillard.

A. I don't know --

MR. WACHTELL: Are you asking him if he knows that?

MR. FINZEN: Yes.

A. I don't know that to be a fact.

Q. And it's your testimony, if I understand it, that you didn't know it from this source or any source as of the time you testified at the Waxman hearing; is that correct?

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A. I believe that's correct.
Q. At any time up until today, have you heard from any source that smokers who compensate their and titrate their nicotine intake get higher levels of nicotine than are shown on the FTC machine records?
MR. WACHTELL: Object to the form of the question as vague and ambiguous.
A. May I -- I --
I always knew that different smokers smoked differently, that some people smoked -- smoked more puffs per cigarette and some people smoked less -- less puffs per cigarette, but I wouldn't characterize it that I knew that smokers of low tar cigarettes smoked more puffs per cigarette than smokers of higher tar cigarettes. I -- I wouldn't characterize it that way.
Q. And from any source up until today have you learned that smokers of low tar cigarettes, by titrating their -- their nicotine intake, obtain higher levels of tar than are shown on the FTC numbers?
MR. WACHTELL: Object to the form of the question, vague and ambiguous and without foundation.
A. I mean I -- I knew, you know --
MR. WACHTELL: For my edification, I'm

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ignorant of all this, what does "titrating" mean?

MR. FINZEN: I'm not -- I'm not here for your edification.

MR. WACHTELL: Okay. Would you mind telling me? I don't know what the word "titrate" means.

MR. FINZEN: It will have to be off the record. Not on the record.

A. I -- I knew that smokers could -- could regulate the amount of smoke that they got by just changing the number of puffs that they took on a cigarette with a frequency, but never -- never focussed in on whether it was specifically done by high tar smokers or low tar smokers.

Q. Were you aware that by regulating that intake, they obtained tar amounts greater than the amounts shown on the FTC tar numbers?

MR. WACHTELL: Object to the form of the question as vague and ambiguous, without foundation, and misleading. Who's "they?" All smokers, some smokers, any smokers?

MR. FINZEN: Smokers who regulate. Listen to the question.

MR. WACHTELL: It wasn't in the question. That's my objection. Question was un -- unadorned

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and unspecified.
A. Smokers who regulate could get more or less or the same amount.
Q. So in some circumstances they could get more tar than shown in the numbers.
MR. WACHTELL: Are you asking this witness to give you his opinion now, or what he knew at a given date? I don't understand what your question is. And can you specify what your question is, please, Bruce?
Q. Do you know that sitting there today?
A. Sitting here today?
Q. Yes.
A. I -- I know that smokers could get more or less smoke depending on how they smoke the cigarettes.
Q. And depending on how they smoke the cigarettes, smokers could get more tar than the amount shown on the FTC tar numbers.
MR. WACHTELL: Which smokers? Vague and ambiguous. All smokers, some smokers, which is the question?
A. What -- what's the question on the table?
Q. And depending on how they smoke the cigarette, smokers could get more tar than the amount shown in the FTC tar numbers.

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MR. WACHTELL: Same objections.

Q. Correct?

A. Smokers could get more or less or the same amount of tar, depending on how they smoked the cigarette.

Q. And by regulating the way they smoked the cigarette, smokers could obtain more nicotine than shown in the FTC tar and nicotine numbers; correct?

MR. WACHTELL: Same objections.

MR. MONICA: I'm going to object to the question as being vague and confusing. I think the witness has just said that you get more tar and nicotine by smoking more cigarettes or more puffs. He hasn't compared it with the FTC. I object to it as vague and confusing.

MR. FINZEN: John, all you got to do is say objection. You know that.

MR. MONICA: Well I wanted to specify the reason for my objection.

MR. FINZEN: I don't need the specification.

MR. WACHTELL: Oh. Maybe you do.

MR. FINZEN: No, I don't.

MR. WACHTELL: Okay. That was a joke for the record.

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Q. Question is: By regulating the way they smoke the cigarettes, smokers could obtain more nicotine than shown in the FTC tar and nicotine numbers; correct?

MR. WACHTELL: Same objections. Lacks foundation, vague and ambiguous.

A. I think the -- my --

My answer was that they -- they can get more or less or the same amount of smoke, and nicotine is a component of smoke.

Q. And the evidence on that was fairly clear as of July of 1980 to the individuals who received the memorandum that is attached to Plaintiffs' Exhibit 1191; correct?

MR. WACHTELL: Object to the question, lacking foundation, misleading, vague and ambiguous. Evidence on what? Question is also argumentative.

A. I -- I don't know that to be a fact.

Q. Did Lorillard ever report in any of its advertising to smokers of low tar cigarettes that the FTC tar and nicotine numbers may not accurately depict the amount of tar and nicotine they receive from those cigarettes?

MR. WACHTELL: Object to the form of the question as misleading, lacking foundation, vague and

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ambiguous.
A. I don't know.
Q. In advertising cigarettes as low tar or ultra low tar, wasn't Lorillard attempting to reassure smokers that they were getting less tar and reducing their risk of disease?
MR. WACHTELL: Object to the form of the question as compound, compound and vague and ambiguous.
A. Lorillard --
MR. WACHTELL: Can you break it out? Can you break it down?
MR. FINZEN: You may answer.
A. Could you break it down, please?
Q. You started to answer until your counsel said break it down.
A. I have very -- I have very good counsel.
Q. Well you have very active counsel, I'll say that.
MR. WACHTELL: You're making me the active. I'd love not to say a word.
MR. FINZEN: I'd love you not to say a word.
MR. WACHTELL: Don't ask compound questions; I won't object as compound.

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Please break it up, Bruce. Please.

Q. In advertising cigarettes as low tar or ultra low tar, was Lorillard attempting to reassure smokers that they were getting less tar?

MR. WACHTELL: Object to the form of the question, vague and ambiguous.

A. I think Lorillard was telling its consumers that it was getting a certain amount of tar.

Q. And that certain amount of tar was less tar than in -- than in higher tar cigarettes; correct?

A. That stands to reason, yes.

Q. And in advertising cigarettes as ultra low tar, wasn't Lorillard attempting to reassure smokers that they were reducing their risk of disease?

A. Not necessarily.

Q. Were they in part?

A. I don't know.

Q. Having seen the exhibits that we looked at this afternoon that Lorillard had in its files concerning the pharmacological effect of nicotine, do you still believe that nicotine is not addictive?

MR. WACHTELL: Object to the form of the question as misleading, without foundation, vague and ambiguous. You may answer.

A. By the classical definition or classic

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definition of "addiction," I don't believe that my testimony has -- or what I would testify to has changed any since the Waxman hearings.

Q. And what do you mean by "the classical definition?"

A. The definition that -- that I referred to is the one that -- that I grew up believing, that you look at the intoxication effect, look at the withdrawal symptoms, look at aberrant behavior, the lack of -- lack of the product or lack of the supposedly addictive substance. And that's -- that's basically what I think is the classic definition of addiction.

Q. Would --

Would you agree that if you do not believe that smoking is addictive, it is reasonable for smokers of Lorillard products to also believe that nicotine is not addictive?

MR. WACHTELL: As he understands the word or as he uses the word. You may answer.

A. As I understand the definition of addiction, I would say it's not unreasonable.

Q. Let me show you what's been previously marked as Plaintiffs' Exhibit 1192. This is a part --

MR. MONICA: This has got another exhibit number on it, Bruce, in front --

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MR. FINZEN: Yes.

MR. MONICA: -- at the bottom.

MR. FINZEN: I'll explain that for the record. This is part of an exhibit that was previously marked as -- as Defendants' Exhibit 2451, and it is a part of that exhibit containing the cover page and pages eight, nine and 10. Is that what you have?

THE WITNESS: Yes.

Q. And this exhibit, which is part of the expert report of Richard D. Hurt, M.D., refers at the bottom of page eight, which is the second page of the exhibit, to the American Psychiatric Association Diagnostic and Statistical Manual Roman IV or the DSM IV. Do you see that?

A. Yes.

MR. MONICA: Bruce, excuse me. I'd like to properly identify this document. This is, as I understand it and if I recall from Dr. Spears' deposition, this document consists of three pages -- four pages that you pulled out of your expert's report, Mr. Hurt, and the reason you pulled them out of his report is to avoid putting into the record the Category I information, and this is the --

As I understand it, this is the same exhibit as

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we had with Dr. Spears; is that right?

MR. FINZEN: Which I've identified as 1192. That's what it was marked as, and it's already an exhibit in the litigation.

MR. MONICA: Thank you.

BY MR. FINZEN:

Q. Do you understand --

Have you previously heard of the American Psychiatric Association Diagnostic and Statistical Manual?

MR. WACHTELL: Which one?

Q. Roman IV.

A. I may have.

Q. Have you heard something referred to as the DSM before?

A. I believe I have, but I'm not sure when.

Q. And do you have an understanding as to the DSM IV being criteria that are accepted for various diagnostic criteria of diseases that are accepted by the American Psychiatric Association?

A. I really don't.

Q. Have you seen the DSM IV criteria for substance dependence?

A. No, I have not.

Q. Look -- turning --

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Or starting at the bottom of page eight and going over to the top of page nine, it says, "DSM-IV defines substance dependence as a maladaptive pattern of substance use leading to clinically significant impairment or distress as manifested by three, parens, or more, close parens, of the following seven criteria occurring at any time in the same 12-month period." See that?

A. Uh-huh.

Q. Accepting that as the working definition, the criteria then, the seven criteria --

MR. WACHTELL: Working definition of what?

MR. FINZEN: DSM IV.

MR. WACHTELL: Of substance dependence.

MR. FINZEN: Right.

Q. -- the seven criteria are then listed after that in the bullet points. Do you see that?

A. Uh-huh.

Q. First one is tolerance. See that?

A. Yes.

Q. You have been a smoker in the past; is that right?

A. That is incorrect.

Q. You've never smoked cigarettes?

A. I have smoked a few cigarettes, but I

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wouldn't -- never called myself anything more than an extremely, extremely casual, infrequent smoker.

Q. Based upon your experience, when you first began smoking cigarettes for the first time, did you experience symptoms of things like light-headedness or nausea?

A. I don't think so, no.

Q. Have you been around individuals who were new smokers who ever said to you that they were experiencing those symptoms when they first began smoking cigarettes?

A. Not really. It's been many years since I've been around a lot of new smokers.

Q. When you smoked cigarettes, did you notice that your ability to not have any symptoms of light-headedness or nausea or feelings of those kinds got less as time went on as you smoked more cigarettes?

A. No. I -- I wasn't -- I --

I didn't smoke that many cigarettes, so I'm --

Q. Have you ever --

Have you ever heard anybody say that when they first began smoking they were dizzy and light-headed and over time those symptoms went away?

A. Not really.

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Q. Have you ever known individuals who quit smoking?
A. Sure. Yes.
Q. Have you heard those individuals complain of symptoms of irritability and inability to concentrate, restlessness, those kinds of symptoms when they were quitting smoking?
A. I've heard them say that it was -- it was difficult, but I'm -- I'm not sure that it was characterized as irritability.
Q. Frustration, anxiety, restlessness, have you heard them describe any those terms that they experienced while they were withdrawing -- or while they were quitting smoking?
MR. WACHTELL: In those words?
MR. FINZEN: Yes.
A. Not necessarily.
Q. You don't know anybody who's ever been a quitter that's expressed those symptoms to you, any of them?
A. I --
The one who I know who has quit just quit and misses it.
Q. But experienced no symptoms of the kind I've described at all while they were quitting.
MR. WACHTELL: Is that a question?

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MR. FINZEN: Yes.

MR. WACHTELL: Well it doesn't read as one. Could you --

Could you look at it and perhaps rephrase it, Bruce?

Q. Can you answer the question?

A. You have to repeat it.

Q. But none of the people that you know who have quit experienced symptoms of the kind that I have described at all while they were quitting; is that correct?

A. That's correct. But I -- you know, I have not -- have not been close enough to them at the time to have probed how they were feeling.

Q. Are you aware that the amount smoked tends to increase the longer that somebody is a smoker?

MR. MONICA: Objection, vague and -- and confusing.

A. Amount of what?

Q. The amount of cigarettes consumed increases the longer someone smokes.

A. I'm not necessarily aware of that.

Q. Are you aware that the amount of cigarettes consumed per year for, say, 18-year-old smokers is less than for 20-year-old smokers?

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A. I'm not aware of that.
Q. Have you seen any statistics at all on the level of consumption of cigarettes by age?
A. Not from --
Not for many years.
Q. Had you at some point in the past?
A. I probably have.
MR. WACHTELL: When you say "consumption of cigarettes," Bruce, "by age," do you mean on the average population, or by each -- by each individual smoker?
MR. FINZEN: By --
MR. WACHTELL: By those who smoke?
MR. FINZEN: By smokers of those ages.
A. I -- I may have years ago.
Q. Do you recall, when seeing those statistics, that the number of cigarettes consumed on average was greater for 20-year-old smokers than for 18-year-old smokers?
A. I don't recall that.
Q. You don't have a recollection one way or the other?
A. I don't have a recollection one way or the other.
Q. Have you ever --

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A. I -- I think --

I think if it had been significantly higher, I might have remembered, but I can't -- I can't characterize it.

Q. Well why do you think you would remember it only if it was significantly higher?

A. Probably would have been something that would jog my memory.

Q. What do you consider significantly higher?

A. Double, triple.

Q. Double or triple the consumption.

A. Yeah.

Q. If it's less than that, you don't consider it significantly higher?

A. That's not what I said.

Q. Well I'm asking you, is that --

Is that your testimony?

A. No.

Q. Have you known people who wanted to quit smoking but were unsuccessful?

A. I know people who have tried to quit smoking a number of times.

Q. And have been unsuccessful at quitting?

A. Among other things, yes.

Q. Have you known people who wanted to cut down the

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number of cigarettes they consumed and were unable to cut back the number?

MR. WACHTELL: Object -- object to the form of the question, vague and ambiguous, "unable."

A. I -- I know --

I've known people who have wanted to cut back.

Q. And were unable to?

MR. WACHTELL: Same objection.

A. Not necessarily.

Q. What does that mean?

A. That means that most of the people I know who have wanted to quit or cut back have.

Q. Have you known people who wanted to cut back who didn't?

MR. WACHTELL: Object --

Well, object to the form of the question.

A. Yes.

Q. And I think you already said you've known some people who expressed a desire to quit but didn't.

A. That's correct.

Q. Are there buildings here in New York that are smoke-free, where people can't smoke?

A. I believe most buildings in New York are -- are smoke-free.

Q. And have you had occasion in the wintertime to

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see individuals standing outside of buildings smoking cigarettes?

A. Sure.

Q. And have you observed that take place during periods of time when the weather was quite cold?

A. And quite warm and beautiful, sunny days and -- you know, and all different kinds of weather.

Q. But I'm referring specifically to the winter months now when it might have been wind chills at zero or below zero, have you seen people outside of offices smoking?

A. Yes.

Q. And what is --

What is it about smoking that causes those people, you think, to leave the comfort and warmth of their offices to go stand out on Park Avenue in cold, inclement weather and smoke cigarettes?

A. They want a cigarette.

Q. What is it about wanting the cigarette that causes them to do that?

A. They want --

They want the enjoyment. They want to take a break.

Q. Think it's the nicotine?

A. I don't know.

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Q. Have you known individuals who have been smokers who've had heart attacks?

A. I've -- I know of them.

Q. And have you known individuals who are smokers who have had heart attacks who continued to smoke after their heart attacks?

A. I know of -- of -- of people.

Q. And have you known people who continued to smoke after their doctors have advised them they should quit smoking for health reasons?

A. Yes.

Q. And it's fair, is it not, to say that the reason they continued to smoke, in spite of that advice, is because of the nicotine addiction they have to those cigarettes?

A. I don't think it's fair to say that.

Q. Looking at the bullet points on page nine of Exhibit 1192, do you think that cigarettes exhibit evidence of tolerance?

MR. MONICA: Objection, vague.

MR. WACHTELL: Vague and ambiguous.

MR. MONICA: Confusing.

A. I don't know what that means.

Q. Turn the page.

A. Forward or back?

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Q. I'm sorry. At the bottom of the page where tolerance is -- is defined; that is, that a person who is a new smoker initially experiences certain symptoms that diminish with continued smoking, do you believe that smoking exhibits evidence of tolerance?

A. I -- I don't know.

Q. Turn the page.

Do you believe that smoking evidences withdrawal as it is described at the top of page ten?

MR. WACHTELL: Object to the form of the question as vague and ambiguous and without foundation.

MR. MONICA: It's also a compounded question.

A. I don't know what the withdrawal symptoms are. I know people miss it when they -- when they stop.

Q. But I think your testimony was you don't -- you don't know anybody who has experienced the symptoms of irritability or difficulty concentrating, restlessness, those things; correct?

MR. WACHTELL: That was not his testimony. You're mischaracterizing the testimony. Object to the question.

Q. Is that your testimony?

A. I -- I don't know --

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I'm trying to think back to the people I know who have -- who have quit and when they've quit. And I wasn't close enough to them to characterize what -- what it was in the withdrawal that manifested itself.

Q. And in terms of the next bullet point on page ten, that smokers regularly smoke larger amounts over a longer period of time, that's -- you don't believe that to be true?

MR. WACHTELL: That isn't what it says. You didn't read the sentence. I object to the form of the question.

MR. FINZEN: Can you answer?

A. Well the bullet here says, "Smokers regularly smoke larger amounts or over a longer period of time than intended," and I -- I don't know that to be true.

Q. The next bullet point, "The desire to cut back or control substance use also occurs regularly in smokers. Over 80 percent of smokers in the US express a desire to quit, but on an annual basis, only five percent of the total are able to stop." Do you see that?

A. Uh-huh.

Q. Do you believe that cigarettes are exhibiting an unsuccessful effort or a persistent desire -- let me

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say -- start that again.

Do you believe that cigarettes exhibit persistent desire or unsuccessful efforts to cut down or control their use?

MR. MONICA: Object. I believe you misspoke.

A. I don't understand that question.

MR. MONICA: Vague and confusing.

Q. I'm sorry.

Do you believe that smokers are exhibiting an unsuccessful effort or persistent desire to cut down or control their smoking?

MR. WACHTELL: Object to the question as vague and ambiguous and compound.

A. Some.

Q. Do you believe that smokers who go stand out in the cold in winter in New York or other northern climates in order to smoke in smoke-free buildings are reducing their social, occupational or recreational activities because of their substance use?

A. I'm -- I'm not sure I follow you.

Q. Yes.

Do you believe that smokers who stand out in the cold winter in New York or other northern climates in

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order to smoke, because their offices are in smoke-free buildings, are reducing their social, occupational or recreational activities because of their substance use?

A. Such people --

Sounds like you got a lot of questions in the middle of that. I'm not sure. I don't understand the connect --

If you break it into discrete parts, maybe I can help you.

Q. Do you believe that they are doing that because of their cigarette addiction?

A. No.

Q. Having looked at the DSM IV definition of dependence, do you still believe that nicotine is not addictive?

MR. WACHTELL: Object to the form of the question as lacking foundation and very, very highly misleading.

MR. REILLY: You also --

You haven't shown him DSM IV. You showed him excerpts from it, not the whole document.

MR. FINZEN: Does anyone else want to jump on the record?

MR. MONICA: I'll join.

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MR. WACHTELL: It's a very bad question. You shouldn't be surprised people are jumping on the record.

MR. FINZEN: I wouldn't want you to feel left out.

THE WITNESS: Have them jumping off the record. What's -- what's the question?

Q. Having looked at the DSM IV definition of dependence, do you still believe nicotine is not addictive?

MR. MONICA: Same objection.

MR. WACHTELL: Same objections.

A. Is this the definition, DSM IV definition?

MR. WACHTELL: It's a definition of -- apparently it's represented to be a definition of dependence, substance as -- of dependence.

A. I -- I don't --

I can't answer that based on the question.

Q. You can't answer it?

A. I --

You know, based on my understanding of -- of addiction, I don't believe that cigarette smoking is addictive.

Q. Isn't the real reason that you and all of the other CEOs deny addiction is because of the smoker

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choice defense that the industry uses in every smoking-and-health lawsuit?

MR. WACHTELL: Object to the question as compound and asking him to tell you what other people -- as to the reason for their testimony. Argumentative, vague and ambiguous, and lacks foundation.

MR. FINZEN: You may answer.

THE WITNESS: May I have the question, please?

MR. WACHTELL: Are you going to do that if he reads it, or just if I rephrase it?

MR. WACHTELL: If you rephrase it, I'll say "Same objections." If he reads it, I'll keep silent.

MR. FINZEN: All right. Then Dick, why don't you read it. Maybe we'll save some time.

(Record read by the court reporter.)

A. I can't answer for the other tobacco executives, but answering for myself, no.

Q. You're familiar with the defense of smoker choice as being the primary defense in individual smoker lawsuits; are you not?

MR. MONICA: Objection, calls for a legal conclusion.

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A. I'm -- I'm not a lawyer. I don't know.
Q. You're totally unfamiliar with a -- the defense that has been put up in smoking-and-health cases regarding the free choice of the smoker?
MR. WACHTELL: He didn't say that. You're mischaracterizing a previous answer. Object to the question as misleading.
MR. FINZEN: Herb, all you got to do is say "Objection, misleading."
MR. WACHTELL: Well it is misleading.
MR. FINZEN: All you have --
All you have to do is say objection.
MR. WACHTELL: Okay, objection, misleading.
MR. FINZEN: You may answer.
A. May I have the question, please?
Q. You're totally unfamiliar --
You are totally unfamiliar with a defense that has been put up in smoking-and-health cases regarding the free choice of the smoker?
A. No, I'm not totally unfamiliar with the -- with the defenses, but --
Q. You know what it is; correct? You know what that defense is.
A. The choice defense?

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Q. Yes. I'll bet you can recite it for me.

MR. WACHTELL: I think you're being argumentative. Now please desist. If you have questions, please put questions and please don't argue with the witness.

Q. Can you state what the choice defense is?

A. I can tell you what I believe it is. I'm not sure if I'm right or not.

Q. Tell me what you believe it is.

A. I -- I believe it's one of the defenses that the industry has and the companies have used that says that the smoker is free to choose to start to smoke and to stop smoking --

Q. And --

A. -- and to continue to smoke.

Q. And if it turned out that cigarettes were addictive, that defense would be lost to the industry; isn't that correct?

MR. WACHTELL: Object to the form of the question, argumentative, lacks foundation, vague and ambiguous.

MR. MONICA: And calls for a legal conclusion.

MR. WACHTELL: That too.

A. I don't know.

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Q. If an individual --

If the cigarette manufacturers were to admit that nicotine is addictive, they wouldn't then at the same time be able to claim that people can freely start and stop smoking at their choice; correct?

MR. WACHTELL: Same objections.

A. I -- you know, I -- I presume so. But again I'm not a lawyer. I try to spend as little time in court as possible.

Q. Let me show you what's been previously marked in this litigation is Plaintiffs' Exhibit 450. It's a letter from Mr. Knopick to Mr. Kloepfer dated September 9, 1980, bears Bates numbers TIMM0107822 through 823.

Have you seen this document before?

A. No.

Q. Turn to the last page of this letter. The last two sentences of the letter read, "Shook, Hardy reminds us, I'm told, that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as, quote, free choice, close quote, if the person was, quote, addicted, close quote." Do you see that?

A. Yes.

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Q. Have you ever heard people in the industry state that they believed that they would lose the defense of free choice if they admit that nicotine is addictive?

A. I don't recall hearing that.

Q. Have you ever heard anyone at The Tobacco Institute suggest that?

A. Not that I can recall.

Q. Do you know who Mr. Knopick is?

A. No.

Q. Do you know who Mr. Kloepfer is?

A. No.

Q. You don't recognize either of those individuals from your working in The Tobacco Institute?

MR. WACHTELL: Object to the form of the question as without foundation, mischaracterizes the witness's prior testimony.

A. No, I don't.

Q. Would you agree --

A. What --

What was the date of this letter? Is it September 9th, 19 --

Q. September 1980.

A. I was still nine years away from being involved in the industry again.

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Q. Would you agree that if Lorillard were to admit that nicotine was addictive, that it would not be able to claim smokers continue to smoke and start to smoke as a matter of free choice?

MR. WACHTELL: I object to the question as compound, vague and ambiguous, asked and answered, and calls for a legal conclusion.

A. I'm -- I'm not a lawyer. I --

Q. You just don't know one way or the other?

MR. WACHTELL: I think your questions have been answered, and I think at this point you're totally badgering the witness. Come on, Bruce, if you have questions that are substantive and proper, please put them. All you're doing is arguing with the witness.

Q. You don't know one way or the other, sir?

MR. WACHTELL: He's answered that question.

A. I don't know one way or the other.

Q. Do you recall during the Waxman hearing that Congressman Waxman also asked all of the CEOs present to submit studies they had on nicotine and cotinine levels in blood?

A. I believe so. Can you reference it in the transcript though?

Q. Sure. Look at page 132.

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MR. WACHTELL: Of 1226, Bruce?

MR. FINZEN: Yes.

Q. Actually, turn over to 1231, I think.

MR. WACHTELL: I'm sorry, what page are we looking at?

MR. FINZEN: 131.

MR. WACHTELL: 131.

Q. Middle of the page, Congressman Waxman says, "Well, what we want are studies, human studies to measure nicotine levels on blood and studies related to nicotine addiction. Do any of you refuse to give it or will you be willing to give us whatever you may have. You may not have studies, but if you do, we think we ought to get it and we think you ought to give it. Do any of you refuse?"

Do you remember him asking that question?

A. I'm refreshing my memory right here.

Q. Okay. Take a look.

A. Yes, I remember that.

Q. And when he came to you, Congressman Waxman said, "Mr. Tisch?"

You said, "We've done no such studies, but would be glad to give them to you." Do you see that?

A. Yes.

Q. And apparently there was some laughter after you

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said that.
A. I see that.
Q. Were --
Were you just making a joke with the congressman there?
A. No, sir, I wasn't.
Q. Did you have any studies of that kind, to your knowledge?
A. At that point I turned around to the person sitting behind me and I said, "Do we have any such studies?" And he said, "No." And I turned around and I answered the question.
Q. Who was the person sitting behind you?
A. Dr. Spears.
Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1230. This is a letter or a memorandum written by A. W. Spears on Lorillard letterhead dated May 3, 1983, bears Bates number 501559781.
Have you seen this document before?
A. I don't believe so.
Q. This is a memo addressed to a number of individuals. Do you recognize any of those individuals?
A. The only name I recognize is Pat Sirridge, but

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I'm not sure in what context.

Q. None of the others are familiar to you?

A. No.

Q. The letter from Dr. Spears says, "Please find attached an outline of the proposed experiment for Phase II of the cotinine study as promised at our last meeting on April 27." Do you see that?

A. Yes.

Q. When you asked Dr. Spears if there were any studies that were being requested by Congress, he didn't advise you of the cotinine study?

MR. WACHTELL: Object to the question -- Object to the question as lacking foundation.

A. What --

What is the cotinine study?

Q. It's referenced in this letter. He didn't tell you about Phase II of the cotinine study?

A. I -- I don't know what the cotinine study is.

Q. He didn't mention it to you?

A. Obviously not.

Q. Had you ever heard of the cotinine study before today?

A. I don't believe so.

Q. And did you understand that Congressman Waxman was interested in studies involving both nicotine and

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cotinine levels in the blood?

A. You just have to reference where it says cotinine in the transcript.

MR. WACHTELL: Do you have a reference?

Q. Look over at the bottom of page 130, Mr. Johnston's response where he says "...we have done blood nicotine or cotinine studies." See that?

MR. WACHTELL: Well your -- your question was what his understanding was that Representative Waxman had asked for.

MR. FINZEN: I know what my question was, and so does the witness.

MR. WACHTELL: And the witness is asking you to show him where Representative Waxman asked for that.

Q. Do you understand my question?

A. What -- what is the question, sir?

Q. That Congressman Waxman wanted studies you had on blood nicotine or cotinine levels.

MR. WACHTELL: Object to the form of the question, without foundation and misleading.

A. I don't mean to split hairs here, but the question to me was referenced from the middle of page 131, I believe.

Q. Yes.

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A. "...what we want are studies, human studies to measure nicotine levels on blood and studies to -- studies related to nicotine addiction." Now, you know, I don't -- I don't recall the word "cotinine," it's obviously mentioned back here on page 130, and like I said, I don't mean to split hairs, but, you know, I -- I did not understand the request to mean cotinine. If I had --

Like I said, this is -- the first time I've seen this. But if I -- if I had understood it to mean cotinine, and if indeed this study fit within that -- that request, I'm sure that I would have -- would have wanted to know more about why it was not produced.

MR. WACHTELL: When the witness says "this," I think we can agree he was referring to Exhibit 1230.

THE WITNESS: To the exhibit. Sorry. Exhibit 1230.

Q. And on page 131, Mr. Sandefur referred to cotinine as well; correct?

MR. WACHTELL: As well as whom?

MR. FINZEN: As well as Mr. Johnston.

MR. WACHTELL: Your question was whether it was referred to by Representative Waxman.

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MR. FINZEN: And my question now is Mr. Sandefur also referenced it there.

A. Mr. Sandefur represented it there.

Q. And Mr. Johnston on page 130?

A. Mr. Johnson did represent it on page 130.

I mean in any case, I didn't know what cotinine was. I turned around to Dr. Spears and he told me that we had done no such studies, at which point I responded to the congressman.

Q. Let me show you what's been previously marked in this litigation as Plaintiffs' Exhibit 1535. This is a memorandum on Lorillard letterhead dated December 8, 1984 -- actually a letter, more of a letter form from Dr. Spears to several individuals, bears Bates number 512102900.

Have you seen this document before?

A. I don't believe I have.

Q. And in this document Spears writes to several individuals, "Gentleman:

"Please find attached a summary of the nicotine/cotinine study at Battelle which I discussed at our last meeting." See that?

A. Yes.

Q. Do you know any of the individuals who are the addressees of this letter?

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A. I believe --

I believe I know Mr. Rupp. I believe he works in our research area.

Q. When you turned around, talked to Dr. Spears, he didn't mention the Battelle nicotine/cotinine study to you either?

A. That is correct.

Q. So based on that fact you would agree, at least with this one document, there were some studies that Lorillard had dealing with nicotine?

A. There were studies dealing with nicotine?

MR. WACHTELL: Wait a minute. Wait a minute. Wait, wait, wait, wait, wait, wait, wait, wait, wait. I object to the question as without foundation.

MR. FINZEN: You may answer.

A. There were studies dealing with nicotine?

Q. Yes.

A. I -- I don't believe I said that there weren't.

Q. Well you -- you told the congressman that Lorillard didn't have any, "but we'd be glad to give them to you."

A. You're confusing me here, and I --

Q. On page 132 of the transcript, when Congressman Waxman asked you, you said, "We've done no such

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studies, but will be glad to give them to you." Do you recall?

A. That -- that was --

That was in reaction to my question to Dr. Spears, who told me we had done no such studies.

Q. Since your testimony before the committee, have you talked with Dr. Spears or anyone else, other than your attorneys, who indicated to you that perhaps there were some documents that would contradict your testimony in any way, Lorillard documents?

A. The -- the only discussions I've had have been with my attorneys over the last couple of days.

Q. Since the Waxman hearing in 1994, is today the first time that you've been presented with documents that would appear to call into question the accuracy of your testimony before the subcommittee?

MR. WACHTELL: Object to the form of the question as lacking foundation and misleading, and vague and ambiguous.

A. I mean I -- I don't know enough about these documents to know whether they do or do not contradict the requests made by the congressman.

Q. Since your testimony before the Waxman subcommittee, have you become aware that your testimony has been questioned as -- as being not

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truthful?

MR. WACHTELL: Which testimony? Any particular --

MR. FINZEN: Testimony at the Waxman hearing.

MR. WACHTELL: Questioned by whom? Objected to as vague and ambiguous and lacking foundation and misleading and compound.

MR. FINZEN: By anyone.

Q. Are you aware that anyone has questioned whether your testimony on addiction was truthful?

MR. WACHTELL: Objected to as vague and ambiguous.

A. I'm aware that there were possibilities that people -- that certain people were looking into whether my testimony was truthful or not.

Q. Which people?

A. I hear rumors of a Department of Justice inquiry.

Q. Any others? Any other people?

A. I'm sure that there are others. Those are the ones -- that's the one that comes off to me first.

Q. Have you been -- been given any official notification by the Department of Justice that your testimony is being reviewed by the department with

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regard to its truthfulness?

MR. WACHTELL: Object to the form of the question as without foundation. And I will also instruct the witness that he should exclude from his answer any communications he may have had with counsel on the entire subject of what the Department of Justice is or is not doing on the matter. But if you had any conversations with anybody other than counsel, by all means respond to the question.

A. I've had no conversations beyond counsel that I can remember.

Q. From any source other than the Department of Justice, have you become aware that your testimony at the Waxman hearing has been questioned as to its truth or veracity?

MR. WACHTELL: Object to the form of the question as vague and ambiguous, compound. Which testimony? Questioned by whom?

You can answer.

A. People have questioned my -- my truthfulness.

Q. Who?

A. Friends, acquaintances. You know, I'm sure that the attorneys general think that I was not completely truthful.

Q. Are there any names that you can put with those

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individuals?
A. Not offhand.
Q. Have you been contacted by any Lorillard employees who questioned the truthfulness of your testimony before the Waxman Committee?
MR. WACHTELL: Same objections.
A. Not -- not that I can think of.
Q. Have you been contacted by any Lorillard -- Lorillard employees who questioned the accuracy of your testimony before the Waxman Committee?
A. Not that I can think of.
Q. Do you recall Congressman Waxman asking you also during the hearing whether you believed that cigarette smoking causes cancer?
A. I believe I recall that, yes.
Q. And in your answer you denied that it did; did you not?
MR. WACHTELL: Object to the form of the question as mischaracterizing the witness's testimony, and misleading, improper, without foundation.
Can you give us a page reference where any such testimony was ever given?
MR. FINZEN: Can you answer my question?
A. Can you give me a page reference, please?

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Q. Do you have an answer without looking at the transcript? Do you have a recollection of what you said?

A. I have a recollection, but I want to be as accurate as possible. Give me a page reference, please.

Q. I'll be happy to. But if you have a recollection, I'd like to know what it is. What's your recollection?

A. My -- my recollection is that -- that I did not say that I do not believe that smoking causes cancer.

Q. All right. Turn, if you would, please, to page 36 of the Waxman hearing transcript, at the bottom of page 36. Do you have that page, sir?

A. Yes.

Q. Congressman Waxman says, "Mr. Tisch, I want to move to you for a moment. In a deposition last year you were asked whether cigarette smoking causes cancer. Your answer was, quote, I don't believe so, close quote. Do you stand by that answer today?"

"MR. TISCH: I do, sir.

"REP. WAXMAN: Do you understand how isolated you are in the belief from the entire scientific community?"

Turning over to the top of page 37.

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"MR. TISCH: I do, sir.

"REP. WAXMAN: You're the head of manufacturing of a product that's been accused by the overwhelming scientific community to cause cancer. You don't know? Do you have an interest in finding out?

"MR. TISCH: I do, sir, yes.

"REP. WAXMAN: And what have you done to pursue that interest?

"MR. TISCH: We have looked at the data and the data we have been able to see has all been statistical data that has not convinced me that smoking causes death."

Do you see that?

A. Yes.

Q. And is that still your position today with regard to the question of whether or not smoking causes cancer?

A. My -- my position is that I haven't seen the scientific data that can show me the direct link between smoking and death. You know, I -- I can certainly see the statistical relationships, but I have yet to hear of the causal relationship that would allow me to -- to believe that if -- if you smoked you would die.

THE REPORTER: We have to change tape. Off

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the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Have you seen any evidence while you have been at Lorillard in the past that would indicate that people inside the tobacco industry have known for years that smoking causes diseases in humans?

A. Not that I can recall.

Q. Let me show you a document that's previously been marked in this litigation as Plaintiffs' Exhibit 304. This is a document entitled "REPORT ON VISIT TO U.S.A. AND CANADA, 17th APRIL through 12th MAY 1958" by Bentley, Felton & Reid, bears Bates numbers 105408490 through 499.

Have you ever seen this document before?

A. No, sir.

Q. Are you familiar with the individuals whose names are mentioned on the cover page of the document?

A. No, sir.

Q. Have you ever heard those names before?

A. I don't believe so.

Q. Turn, if you would, to the second page of the document that has "ITINERARY" at the top.

A. Uh-huh.

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Q. This page purports to be an itinerary with dates on the left-hand column in April and May, and then in the middle column locations -- or companies, agencies, visited, and on the right, names of individuals. Do you see that?

A. Yes.

MR. WACHTELL: April and May of 1958.

MR. FINZEN: Correct.

Q. Looking down the right-hand column, do you recognize any of the names that appear on the right-hand column?

MR. WACHTELL: Do you mean names of individuals?

MR. FINZEN: Yes, in the right-hand column.

A. I can't say that I do. It's 40 -- 39 years ago.

Q. Looking down the middle column, do you recognize the names of any of the companies or institutions that are listed in that middle column?

A. Yes.

Q. Other than the -- those that are tobacco companies, the --

Starting from the top, the Medical College of Virginia, see that?

A. Yes.

Q. Do you know whether or not that organization was

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ever doing any research concerning issues relating to smoking and health?

A. I do not know.

Q. What about Duke University?

A. I do not know.

Q. Do you know A. D. Little, Incorporated, do you know what that is?

A. I -- I know the company, yes.

Q. And what is that?

A. It's a -- primarily a research and consulting organization.

Q. Do you know whether they ever did research on the issue of smoking and health?

A. I don't know.

Q. TIRC is the Tobacco Industry Research Committee that put out the Frank Statement; is that correct?

MR. WACHTELL: I think you -- I think you're misstating. Didn't put out the frank statement, it was referred to in the Frank Statement. I think you misspoke.

A. I -- I -- I don't know.

Q. Was there more than one Tobacco Industry Research Committee that you're aware of?

A. Up until recently I wasn't aware that there was one.

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Q. Is that one that is referenced in the Frank Statement one that Lorillard was a sponsor of?

A. May I go back to the Frank --

Q. Yes.

A. -- Frank Statement?

It's probably the same one.

Q. And the Roswell Park Memorial Institute, do you recognize that organization?

A. No.

Q. Yale University, do you know whether they were doing any work in tobacco smoking-and-health issues?

A. I don't know.

MR. WACHTELL: You're talking about in 1958?

MR. FINZEN: Yes.

A. I don't know.

Q. The Biological Research Institute.

MR. WACHTELL: What is the question?

Q. Do you recognize that organization?

A. Not necessarily.

Q. The Roscoe Jackson Laboratory in Bar Harbor, do you recognize that organization?

A. I don't think so, no.

Q. The National Cancer Institute in Bethesda?

A. That I recognize.

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Q. You recognize that they were doing work in the issues of smoking and health in 1958?
A. I -- I don't know that they were, but I -- I can assume they would be.
Q. Johns Hopkins Hospital, do you know whether they were doing smoking-and-health research in 1958?
A. I don't know.
Q. Do you know whether New York University was doing smoking-and-health research in 1958?
A. I don't know.
Q. Do you know whether the Sloan-Kettering Institute in New York was doing smoking-and-health research in 1958?
A. I don't know, but I can presume they were.
Q. Do you know whether the -- anyone at the University of Toronto was doing smoking-and-health research in 1958?
A. I don't know.
Q. If you turn the page to the page with number two at the top, the authors in the introduction say, "From our contacts in U.S.A. and Canada we sought information on the following," and then they list a variety of issues. Do you see that?
A. Yes.
Q. Number one is "the extent to which it is

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accepted that cigarette smoke, quote, causes, close quote, lung cancer."

Number two, "up to date evidence as to the carcinogenicity of smoke condensates to animal tissues."

And number three, "the extent to which extrapolation from animals to man is justified."

Do you see that?

A. Yes.

MR. WACHTELL: There's also a four, five, six, seven and eight.

MR. FINZEN: Yes, there is. I think I said that in my initial question.

Q. With regard to -- to those issues, they go on in the next paragraph headed, "quote, CAUSATION, close quote, OF LUNG CANCER," and do you see in the first sentence of that paragraph -- next paragraph they say, "With one exception, parens, H.S.N. Greene, close parens, the individuals whom we met believed that smoking causes lung cancer if by, quote, causation, close quote, we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link." Do you see that?

A. Yes.

Q. Prior to your testimony at the Waxman Committee,

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were you aware at any time that there was a consensus of opinion among the tobacco companies producing cigarettes in the United States that smoking causes lung cancer, if by "causation" it is meant a chain of events which leads finally to lung cancer and which involves smoking as an indispensable link?

MR. WACHTELL: The question is totally impossible. I -- maybe that isn't the proper legal objection, so let me try the proper legal objections.

It misstates the document, it is compound, it is vague and ambiguous, it is misleading.

MR. MONICA: Lacks foundation.

MR. WACHTELL: It lacks foundation.

MR. MONICA: Assumes a fact not in evidence.

MR. FINZEN: You may answer.

A. I --

You know, I don't know how to interpret this -- this sentence here.

Q. Turn over to the next page. Page three at the top, at the very top of the page it says, "Otherwise we found general acceptance of the view that the most likely means of causation is that tobacco smoke contains carcinogenic substances presented in

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sufficient quantity to provide lung cancer when acting for a long time in a sensitive individual." See that?

A. Yes.

Q. Did you ever, before your testimony at the Waxman hearing, hear anyone in the tobacco industry express that view?

MR. WACHTELL: You want to read the rest of the sentence -- the rest of the paragraph, or are you going to take that out of context?

MR. FINZEN: Can you answer my question?

MR. WACHTELL: Object to the form of the question, misleading, lacks foundation, misrepresenting the document, vague and ambiguous.

A. Could you repeat the question, please?

Q. Yes.

Did you ever hear anyone in the tobacco industry express that point of view that's contained in the sentence at the top of page three of Exhibit 304 prior to your testimony at the Waxman hearing?

MR. WACHTELL: Same objections.

A. I don't believe I ever heard that.

Q. Down under "EXTRAPOLATION FROM ANIMAL TESTS TO MAN," bottom of that page, numbered paragraph one, "The human epidemiological data add up to a

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reasonably convincing case that tobacco smoke is weakly carcinogenic to the human lung."

MR. WACHTELL: You can't --

Q. Do you see that?

MR. WACHTELL: You can't read that without reading the preamble to the one.

Q. Do you see that statement?

MR. WACHTELL: Well can I read into the record the preamble so you can have the context here on the record?

MR. FINZEN: You can examine him for two hours when I finish.

MR. WACHTELL: Maybe someone can enlighten me as to Minnesota procedure. In the federal courts under the Federal Rules of Evidence, if somebody refers to a portion of a document, you're entitled to put another portion in the record right then and there to establish context so that the portions shouldn't be misleading. Can someone enlighten me whether that is also the Minnesota procedure. I don't want to step over any lines here.

MR. DOCHERTY: Well, I think maybe the best thing to do is just to have the witness read the whole thing and let the record reflect he's read the whole thing.

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MR. WACHTELL: Whatever the proper procedure is here I want to abide by. I mean I do a lot of litigation in the federal courts, so I know what the Federal Rules of Evidence provide.

Q. Do you have the question in mind?

A. No, I don't.

Q. Looking at paragraph number one under "EXTRAPOLATION FROM ANIMAL TESTS TO MAN," it reads, "The human epidemiological data add up to a reasonably convincing case that tobacco smoke is weakly carcinogenic to the human lung." See that?

MR. WACHTELL: Okay. Object to the form of the question, out of context, misleading, mischaracterizes the document, vague and ambiguous, without foundation.

MR. FINZEN: All I've asked him is if he sees it.

Q. Do you see that?

MR. WACHTELL: Well, but you're asking him to see something out of context, Bruce.

Q. Do you see that sentence? Have I read that accurately?

A. You've read the sentence accurately.

Q. At any time before your testimony at the Waxman hearing, did you hear anyone in the tobacco industry

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express that the human epidemiological data add up to a reasonably convincing case that tobacco smoke is weakly carcinogenic to the human lung?

MR. WACHTELL: Same objections.

A. I don't recall ever hearing such -- such a statement.

Q. Turn to page six numbered at the top. The very last -- second-to-the-last, I'm sorry, paragraph on that page under "T.M.S.C. POLICY ON BIOLOGICAL RESEARCH," the paragraph's first two sentences read, "The majority of individuals whom we met accepted beyond all reasonable doubt cigarette smoke most probably acts as a direct though very weak carcinogen on the human lung. The opinion was given that in view of its chemical composition it would indeed be surprising if cigarette smoke were not carcinogenic." Do you see that?

A. Yes.

Q. Before your testimony at the Waxman hearing, did you ever hear any individual who was a member of the tobacco industry say that it is accepted beyond all reasonable doubt that cigarette smoke most probably acts as a direct though very weak carcinogen on the human lung?

MR. WACHTELL: Same objections.

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A. I don't believe I had heard that.
Q. At any time before your testimony, did you hear any member of the tobacco industry express the opinion that in view of its chemical composition, it would be surprising if cigarette smoke were not carcinogenic?
A. I don't recall ever hearing that.
Q. At any time before you testified, did you hear any member of the tobacco industry say that since 1958 it was accepted beyond all reasonable doubt that cigarette smoking acts as a direct though weak carcinogen in the human lung?
MR. WACHTELL: Object to the form of the question, lacks foundation, misleading, vague and ambiguous, overbroad.
A. I don't believe I ever heard that.
Q. Do you recognize BATCO or -- or B.A.T. Company as a cigarette manufacturing company?
A. If you're referring to British-American Tobacco, it is a cigarette company.
Q. And --
A. Cigarette manufacturing company.
Q. And this report was written by three individuals who were employed by British-American Tobacco. Do you understand that?

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MR. WACHTELL: Is that a question or --
Q. Do you understand that?
A. You're -- you're telling me that.
Q. Okay. Making that representation to you, assuming -- how about that? Assume that these three individuals are employed by British-American Tobacco in 1958. Okay? For purposes of my question, using that as an assumption, can you think of any reason why employees of a tobacco company would write these statements if they were not true?
MR. WACHTELL: Object to the form of the question. You've taken statements out of context. I object to the form of the question as compound, vague and ambiguous, lacks foundation, misleading, hypothetical, and it goes -- withdrawn. That -- that's enough.
MR. FINZEN: You may answer.
THE WITNESS: Can you repeat the question, first of all?
(Record read by the court reporter.)
MR. WACHTELL: Also calls for speculation.
MR. FINZEN: You said you wouldn't do that if he read it back.
MR. WACHTELL: I added. I didn't repeat. I added, Bruce. Calls for speculation. I hadn't

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thought of that one earlier until I heard it again.

A. Okay. I -- I don't know.

MR. FINZEN: It's 5:30.

MR. WACHTELL: Okay.

THE REPORTER: Off the record, please.

(Deposition recessed at 5:30 o'clock p.m.)

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C E R T I F I C A T E

I, Richard G. Stirewalt, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of ANDREW H. TISCH at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 284 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at New York, New York, this 30th day of September, 1997.

RICHARD G. STIREWALT
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, ANDREW H. TISCH, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 284, and that said transcript is a true and correct, full and complete transcription of my deposition except:

ANDREW H. TISCH
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public

My commission expires .

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